

FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

Date: 11/28/2001

To: All Field Offices

Attn: ADIC;
SAC;
CDC
FCI/IT Supervisors
AD Watson;
DADs;
Section Chiefs
AD Gallagher;
DADs;
Section Chiefs

Counterterrorism

National Security

From: General Counsel

National Security Law Unit, Room [REDACTED]

Contact: [REDACTED]

Approved By: Mueller Robert S III
Pickard Thomas J
Parkinson Larry R
Bowman M E

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HEREIN IS UNCLASSIFIED
DATE 09-09-2005 BY 65179 DMH/ELH 05-cv-0845

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Drafted By: [REDACTED]

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Jr:jrl b7C

Case ID #: 66F-HQ-A1255972

Title: NATIONAL SECURITY LETTER MATTERS

Synopsis: Provides guidance on the preparation, approval, and service of National Security Letters (NSLs).

Reference: 66F-HQ-A1255972 Serial 15

Enclosure(s):

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To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

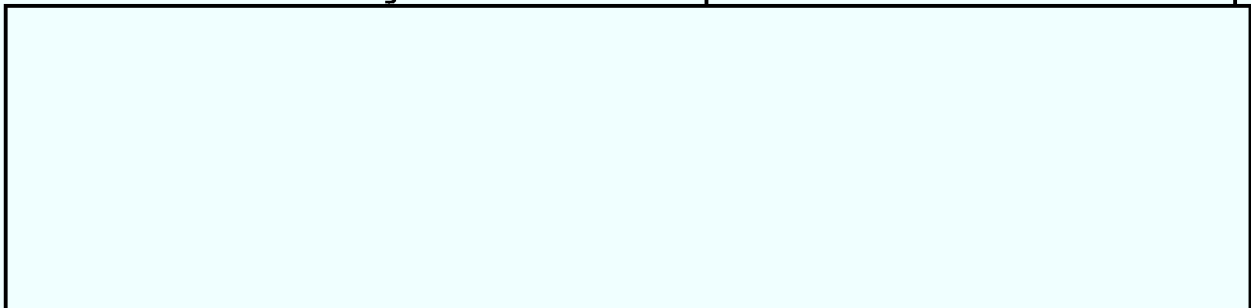
14) FCRA NSL Checklist

Details: In the referenced communication, dated 11/09/2001, the Director of the FBI delegated the authority to certify NSLs to the following officials: (1) the Deputy Director; (2) The Assistant Directors (ADs) and all Deputy Assistant Directors (DADs) of the Counterterrorism Division (CTD) and the National Security Division (NSD); (3) the General Counsel and the Deputy General Counsel for National Security Affairs (DGC), Office of the General Counsel (OGC); (4) the Assistant Director in Charge (ADIC), and all Special Agents in Charge (SACs), of the New York, Washington, D.C., and Los Angeles field divisions; and (5) the SACs in all other field divisions. The purpose of this electronic communication is to provide comprehensive guidance on the preparation, approval, and service of NSLs.

1. Introduction to National Security Letters

NSLs are administrative subpoenas that can be used to obtain several types of records. There are three types of NSLs. First, pursuant to the Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2709, the FBI can issue NSLs for: (1) telephone subscriber information (limited to name, address, and length of service); (2) telephone local and long distance toll billing records; and (3) electronic communication transactional records. Second, pursuant to the Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3414(a)(5), the FBI can issue NSLs to obtain financial records from banks and other financial institutions. Finally, pursuant to the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681u, the FBI can issue NSLs to obtain consumer identifying information and the identity of financial institutions from credit bureaus.

NSLs are tools available in investigations conducted under the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG). The FCIG currently provide that an NSL can be issued during the course of a full international terrorism or foreign counterintelligence investigation. **NSLs cannot be used in criminal investigations unrelated to international terrorism or clandestine intelligence activities.** [REDACTED]



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To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001



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2. General Policy on the Use of NSL Authority

NSLs are powerful investigative tools, in that they can compel the production of substantial amounts of relevant information. However, they must be used judiciously. The USA PATRIOT Act greatly broadened the FBI's authority to gather this information. However, the provisions of the Act relating to NSLs are subject to a "sunset" provision that calls for the expiration of those provisions in four years. In deciding whether or not to re-authorize the broadened authority, Congress certainly will examine the manner in which the FBI exercised it. Executive Order 12333 and the FCIG require that the FBI accomplish its investigations through the "least intrusive" means. Supervisors should keep this in mind when deciding whether or not a particular use of NSL authority is appropriate. The greater availability of NSLs does not mean that they should be used in every case.

In addition, the removal of any requirement for FBIHQ coordination in the issuing of NSLs creates the possibility of duplicate requests for the same information by different field offices. Field offices must take steps to avoid this. In particular, the field should check FBI databases (ACS, Telephone Application, etc.) and open sources to see if the information sought has already been obtained by the FBI or whether it is publically available. This is particularly important when considering issuing NSLs for telephone or electronic communications data under the Electronic Communications Privacy Act (ECPA). Unlike the criminal authorities in ECPA, the NSL authority does not require the government to reimburse carriers or Internet Service Providers (ISPs) for the cost of producing the requested information. A dramatic increase in duplicate NSLs will only augment existing pressure to require governmental reimbursement.

Individual field offices have the responsibility for establishing and enforcing an appropriate review and approval process for the use of NSL authorities.

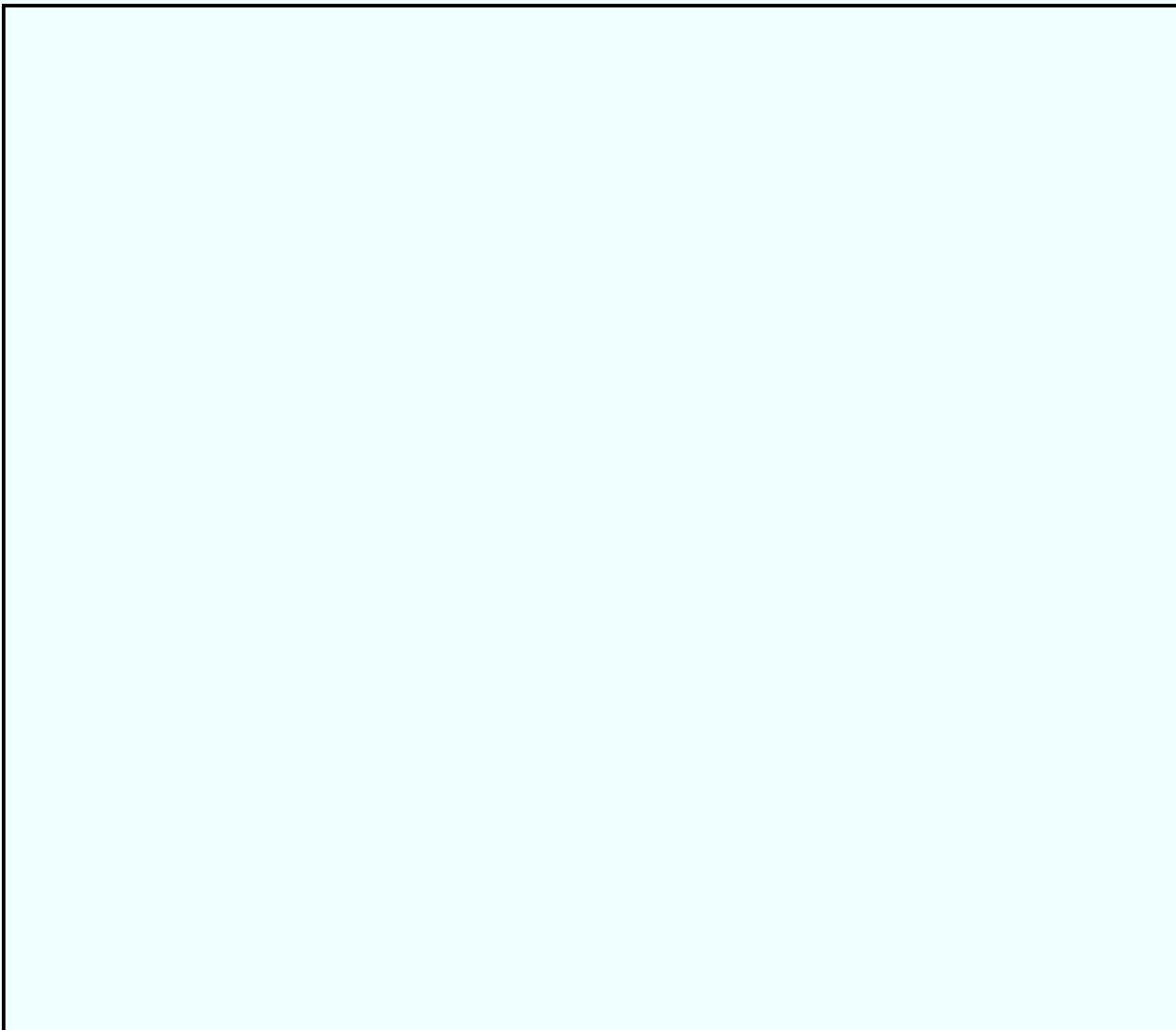
To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

3. The Mechanics of Producing NSLs

For all types of NSLs, the issuing office needs to prepare two documents: (1) the NSL itself; and (2) an EC approving the NSL and documenting the predication. Model NSLs and ECs for all variations of the three types of NSLs are included as attachments to this communication. These materials will also be placed on the [REDACTED] b2 b7E

[REDACTED] Once the initial implementation of these new authorities is accomplished, NSLU will work to develop a macro or form to further streamline the NSL process.

A. The NSL



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To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

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The second paragraph of every NSL contains the statutorily required certification language. The certification language is virtually identical for every NSL.

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The model NSLs for financial records and electronic communication transactional records each have a separate attachment. These attachments provide examples of information

To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

which the company might consider to be financial or electronic communication transactional records.

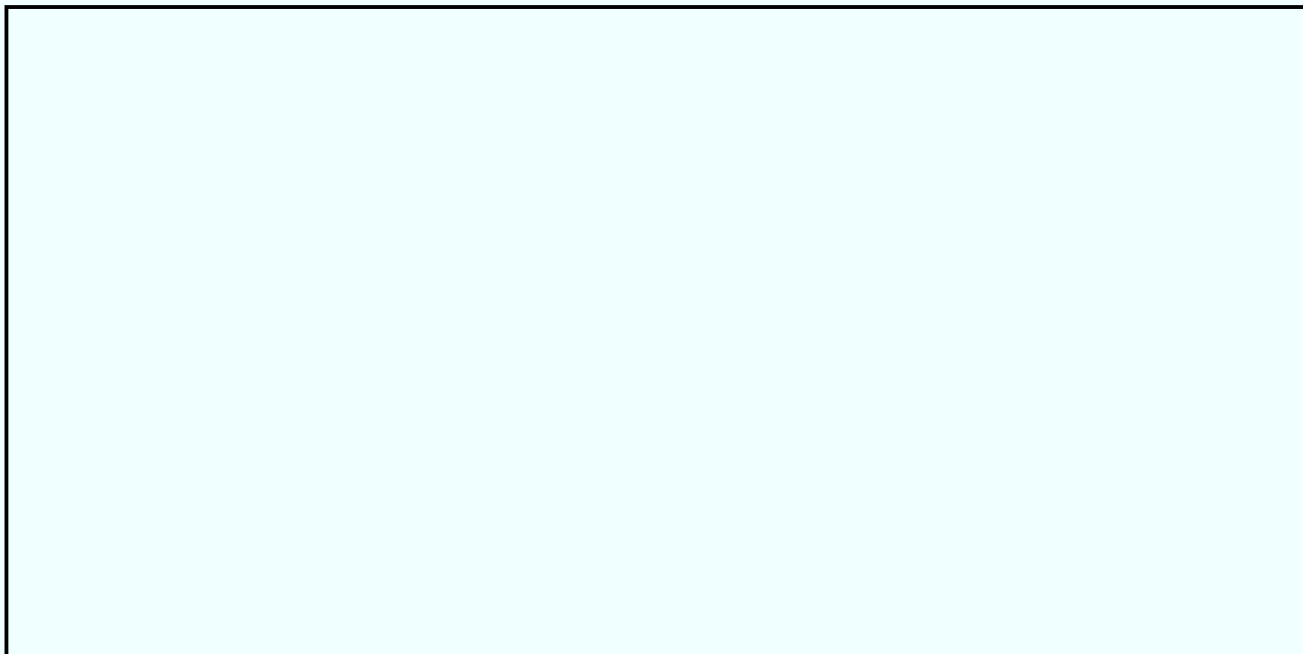
Finally, the NSL is an unclassified document because it does not detail the specific relevance of the requested records to an authorized FBI investigation. There is no need to classify the NSL when attaching it to the cover EC.

B. The Cover EC



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1) Field Descriptors



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To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

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2) Predication and Relevance

The USA PATRIOT Act has greatly simplified the NSL process. The FBI official authorizing the issuance of an NSL is no longer required to certify that there are specific and articulable facts giving reason to believe that the information sought pertains to a foreign power, or an agent of a foreign power. NSLs may now be issued upon a certification of relevance to an authorized investigation to protect against international terrorism or clandestine intelligence activities.

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The relevance requirement ties the requested records to the appropriate

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To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

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3) Approval

The second paragraph in the "Details" section and the "Approved By" descriptor field of the EC should reflect the level of the official approving the issuance of the EC and signing the NSL's certification. Prior to certification, every NSL and cover EC issued by the field division should be reviewed by the squad supervisor, the Office of the Chief Division Counsel, and the ASAC. Lawyers reviewing NSL packages should use the checklists provided with this communication to ensure legal sufficiency. The last step in the approval process occurs when the certifying official (Deputy Director, ADs, General Counsel, ADICs, DADs, DGC, or SACs) personally signs the NSL and initials the EC. Certifying officials may not further delegate signature authority.

4) Reporting Requirements

NSLU will continue to prepare the mandatory reports to Congress required for each NSL type. To ensure that NSLU receives sufficient information to prepare these reports, it is critical that the person preparing the NSL package follow the NSL and EC models very carefully. The second lead in every model EC requests NSLU to "record the appropriate information needed to fulfill the Congressional reporting requirements for NSLs." NSLU will be able to compile the reporting data provided that the cover EC includes

being requested in the NSL. Once NSLU has entered this reporting data into its NSL database, it will clear the lead set in the cover EC.

5) Transmittal

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To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001



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4. NSL Preparation Assistance

Some field divisions may, for a variety of reasons, opt not to exercise their delegated authority to issue NSLs. Other field divisions may exceed their capacity to issue NSLs and seek assistance in handling the overflow. NSLU will continue to process any NSL request that it receives. Field divisions should send their requests directly to NSLU, with information copies to the FBIHQ substantive unit. Such requests must contain all the information identified in this communication as necessary to prepare the NSL package. NSLU anticipates that it will be able to process such requests within one to three business days.

Any questions regarding this communication may be directed to [redacted] NSLU, OGC, at [redacted]

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To: All Field Offices From: General Counsel
Re: 66F-HQ-A1255972, 11/28/2001

LEAD(s) :

Set Lead 1: (Adm)

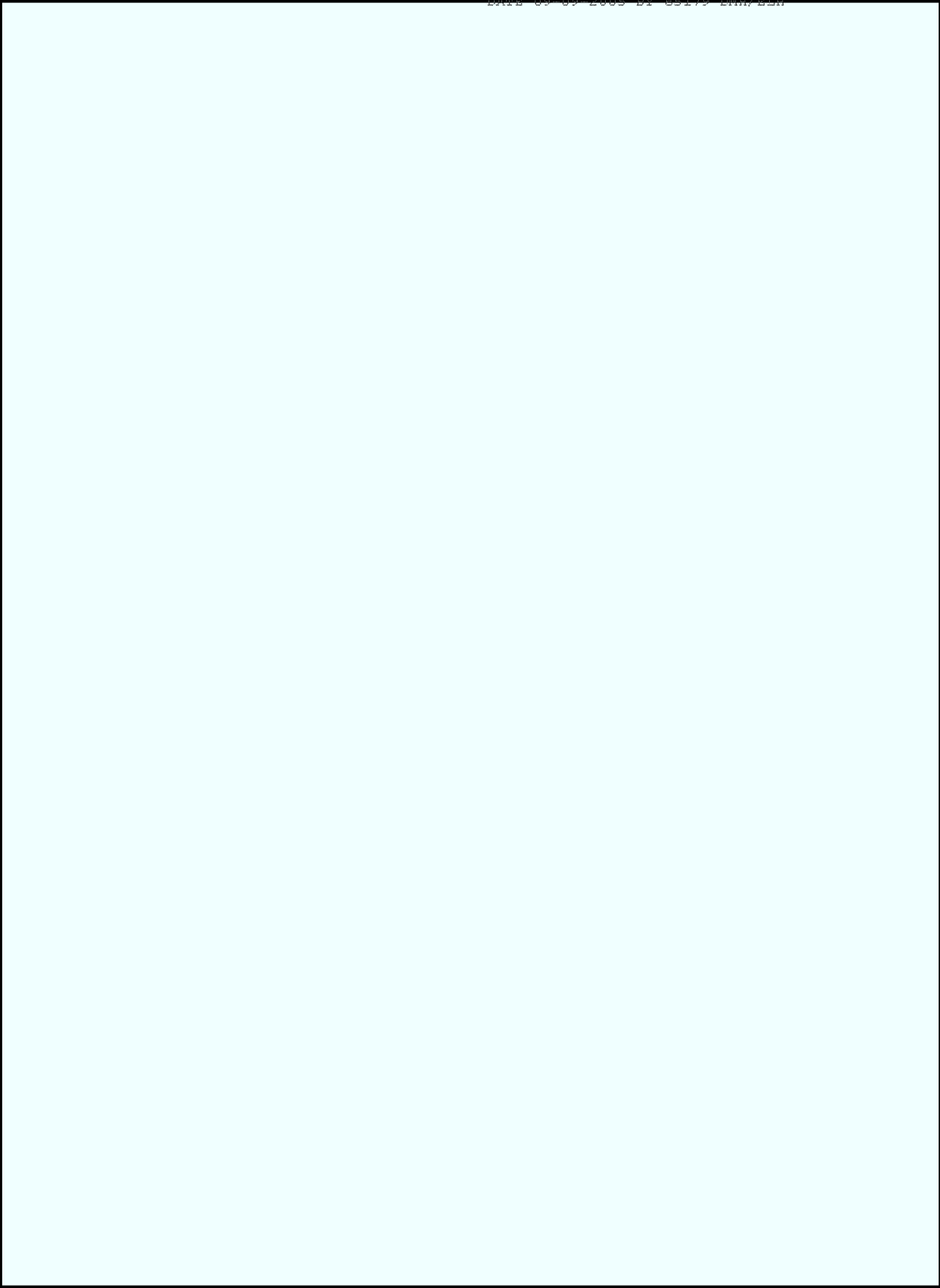
ALL RECEIVING OFFICES

Distribute to all supervisory personnel involved in the
National Security Letter process.

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CA #05-CV-0845

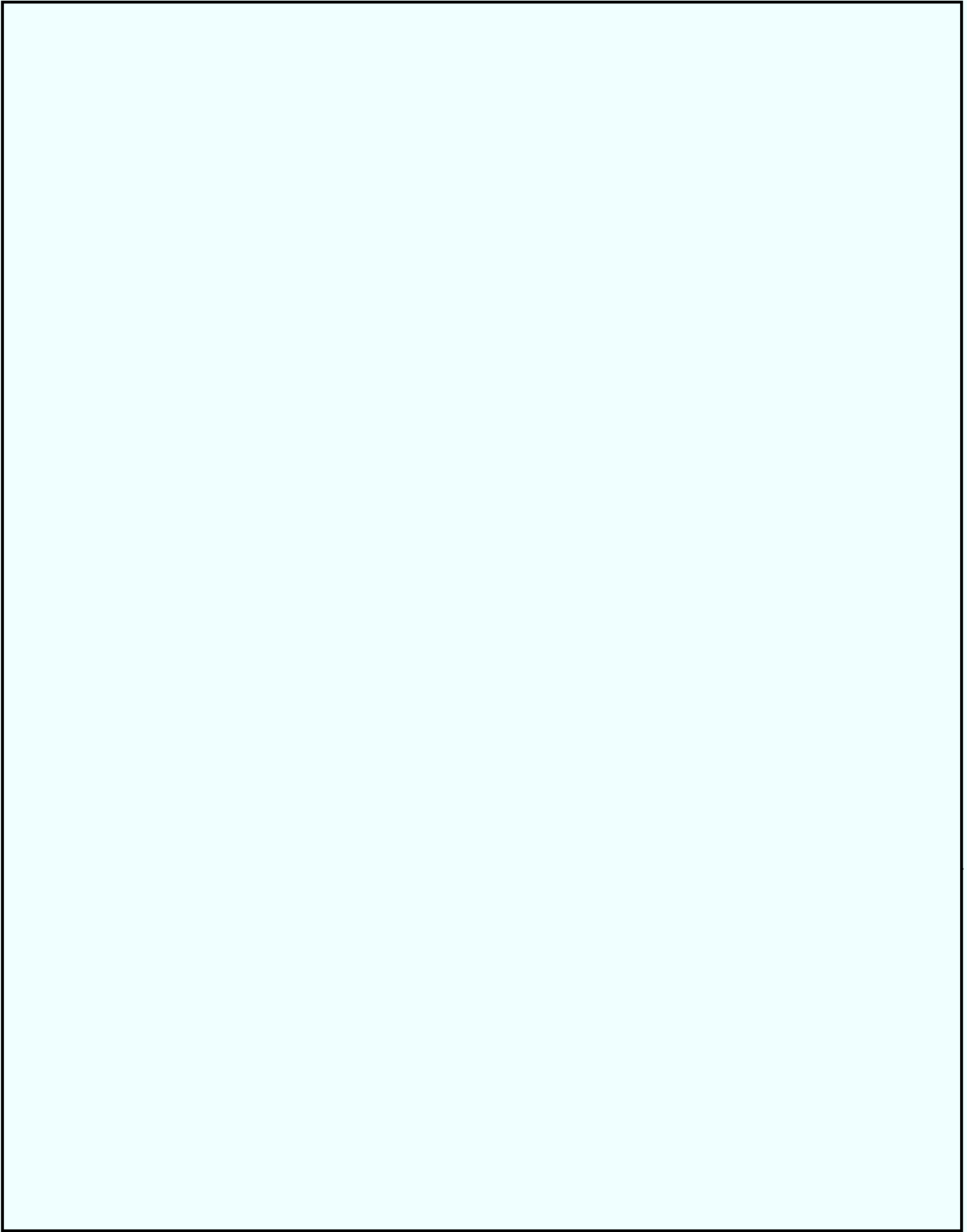
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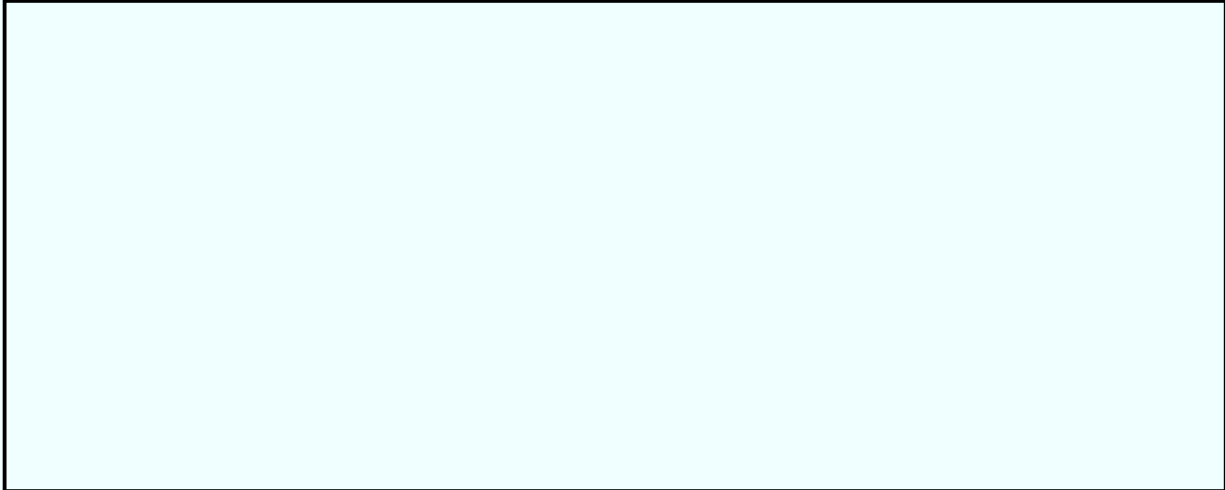
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(Draft responses to Senate Judiciary QFRs, 07/14/2004)

QUESTIONS FOR 10/23/03 INTELLIGENCE COMMITTEE HEARING
ON THE USA PATRIOT ACT

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DATE 09-09-2005 BY 65179 DMH/ELH 05-cv-0845

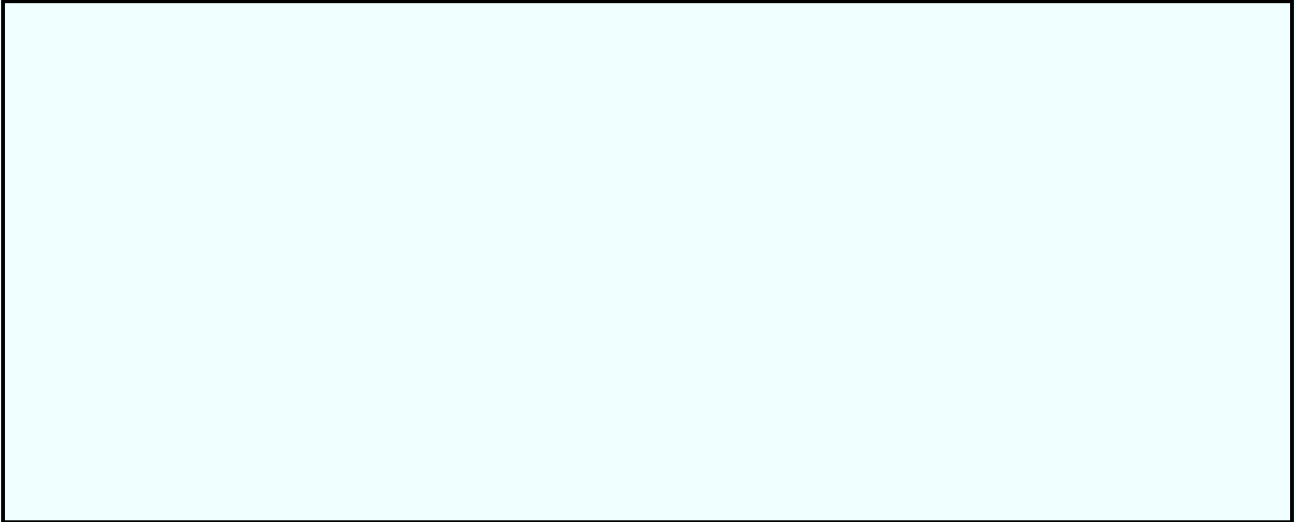
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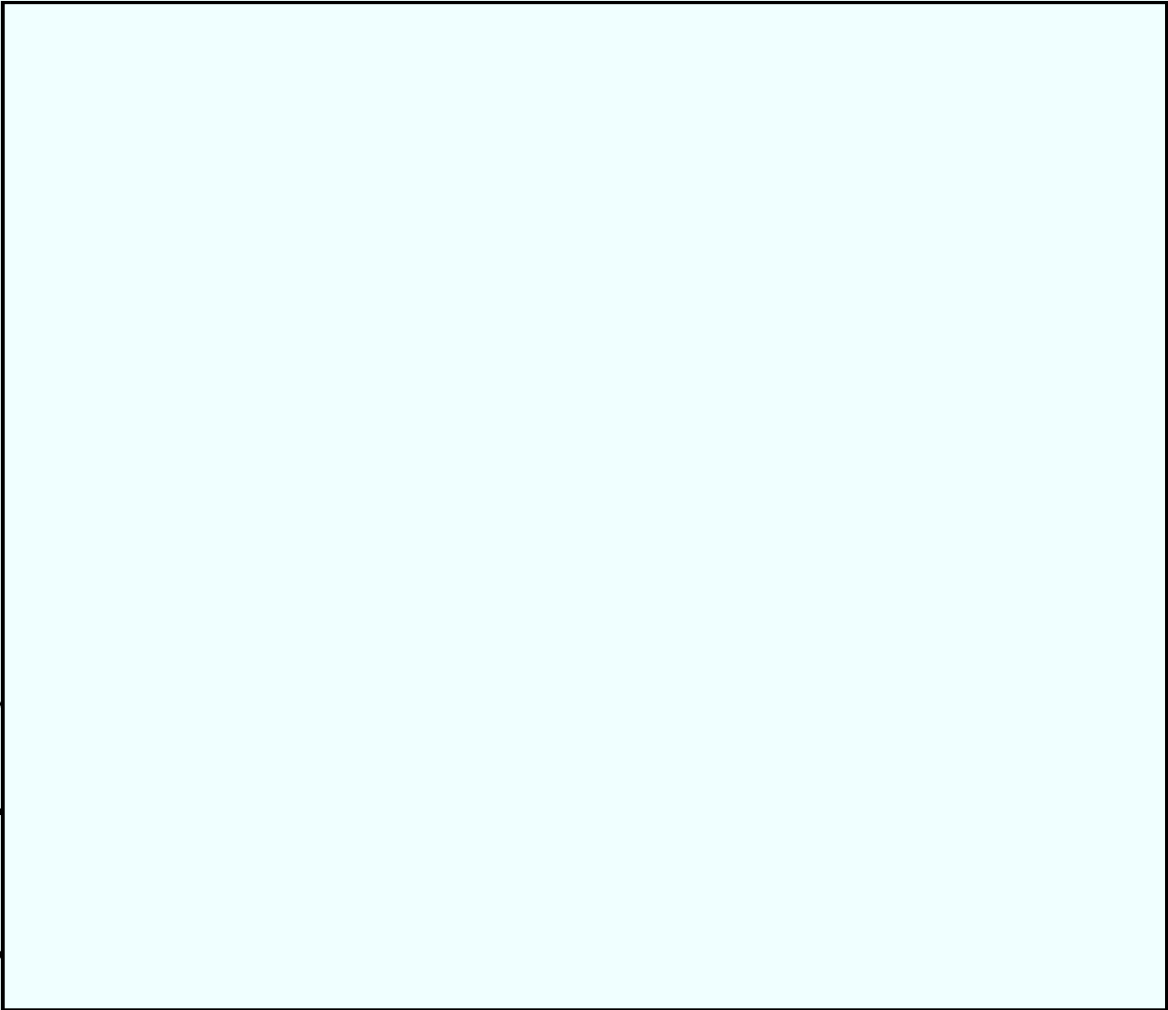


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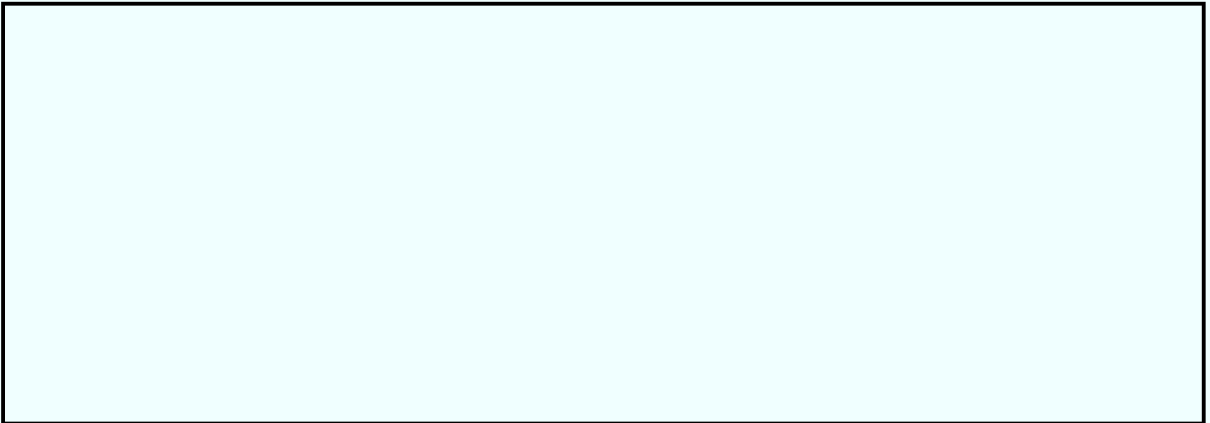
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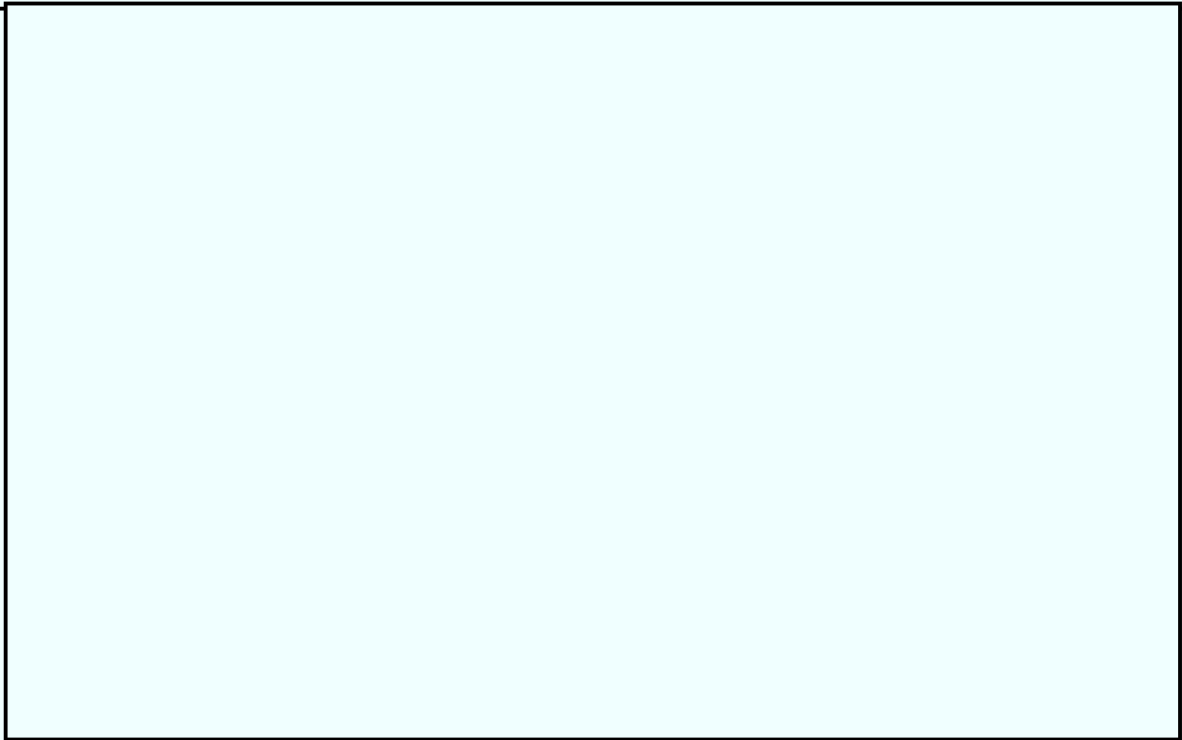


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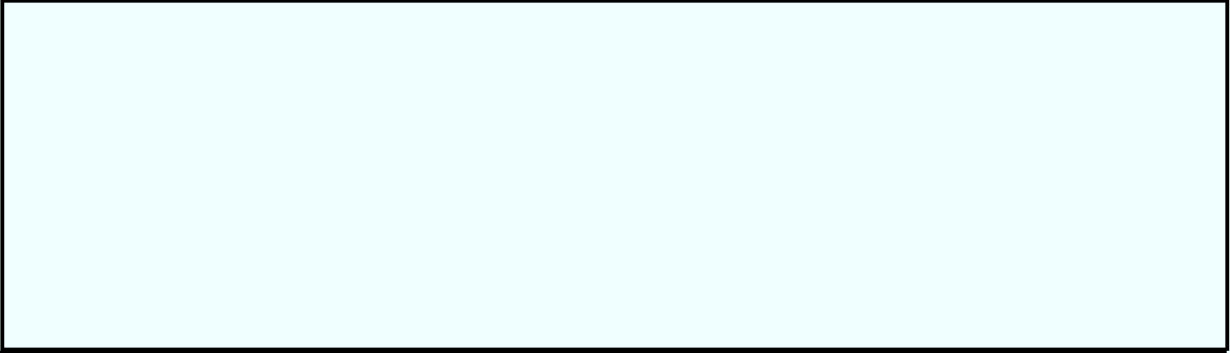


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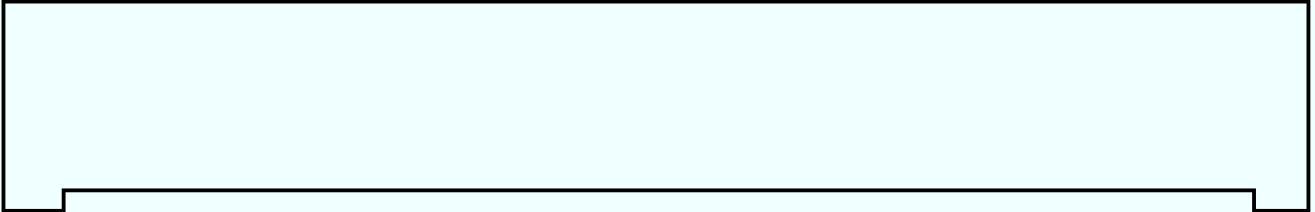
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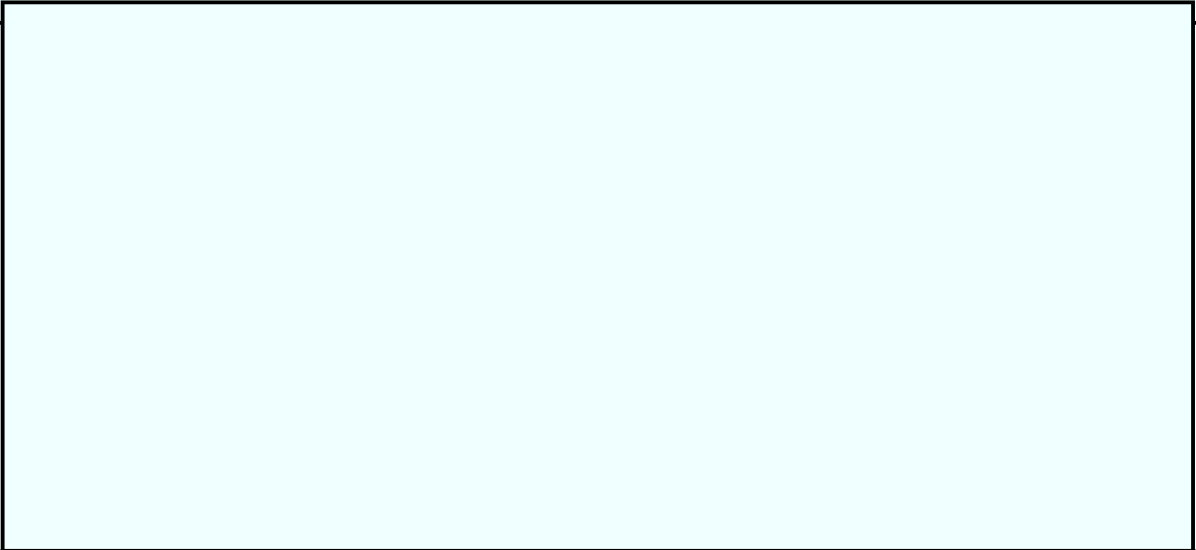


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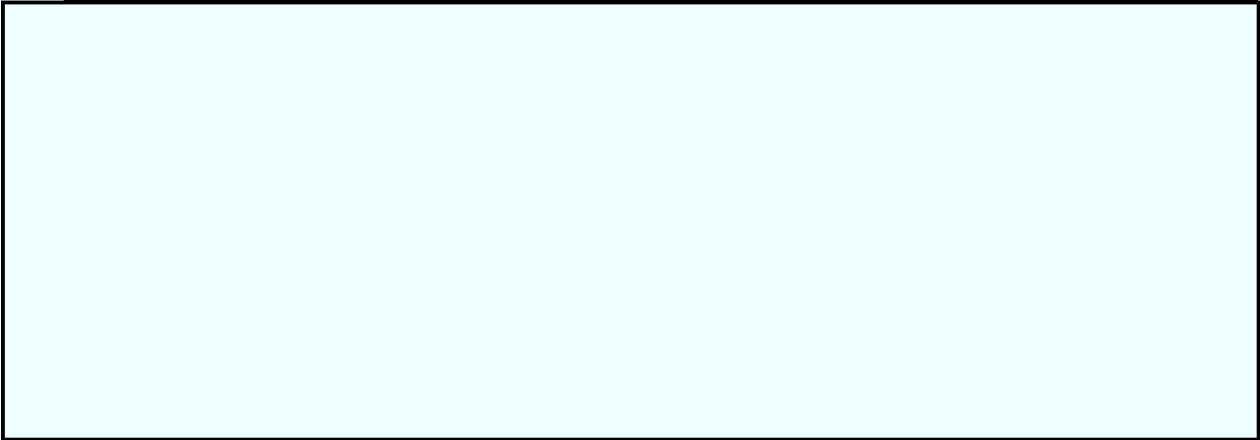
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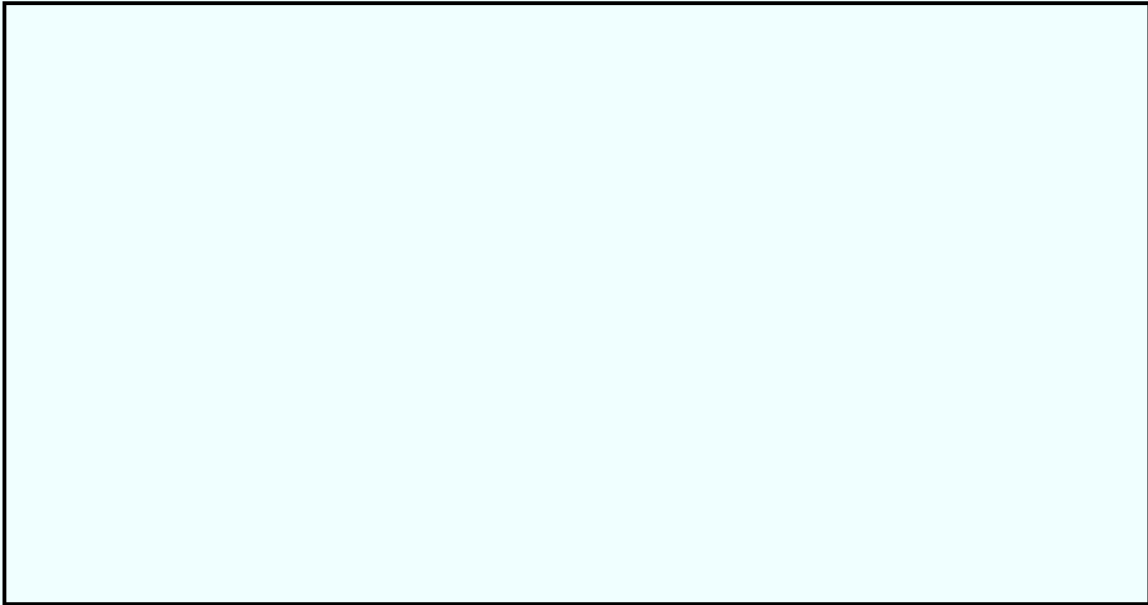
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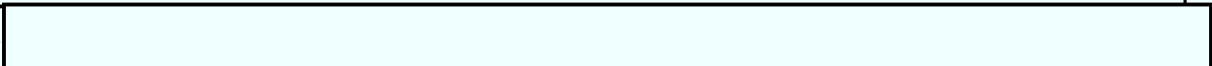
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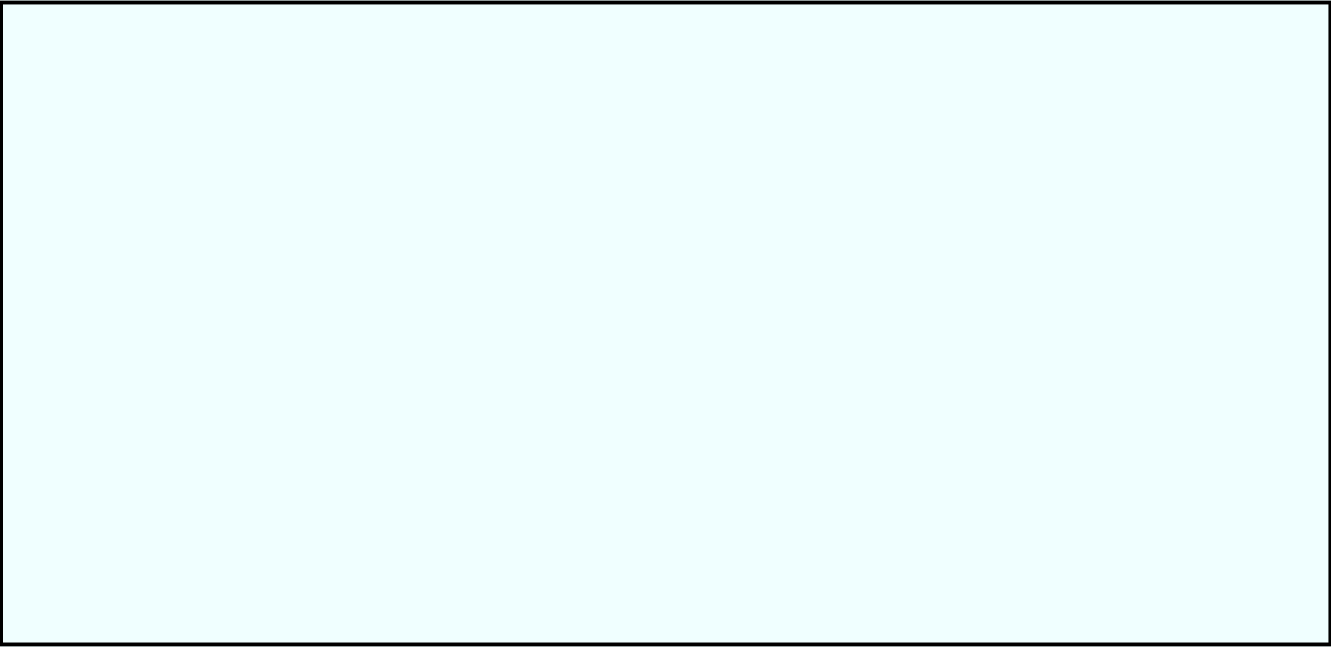
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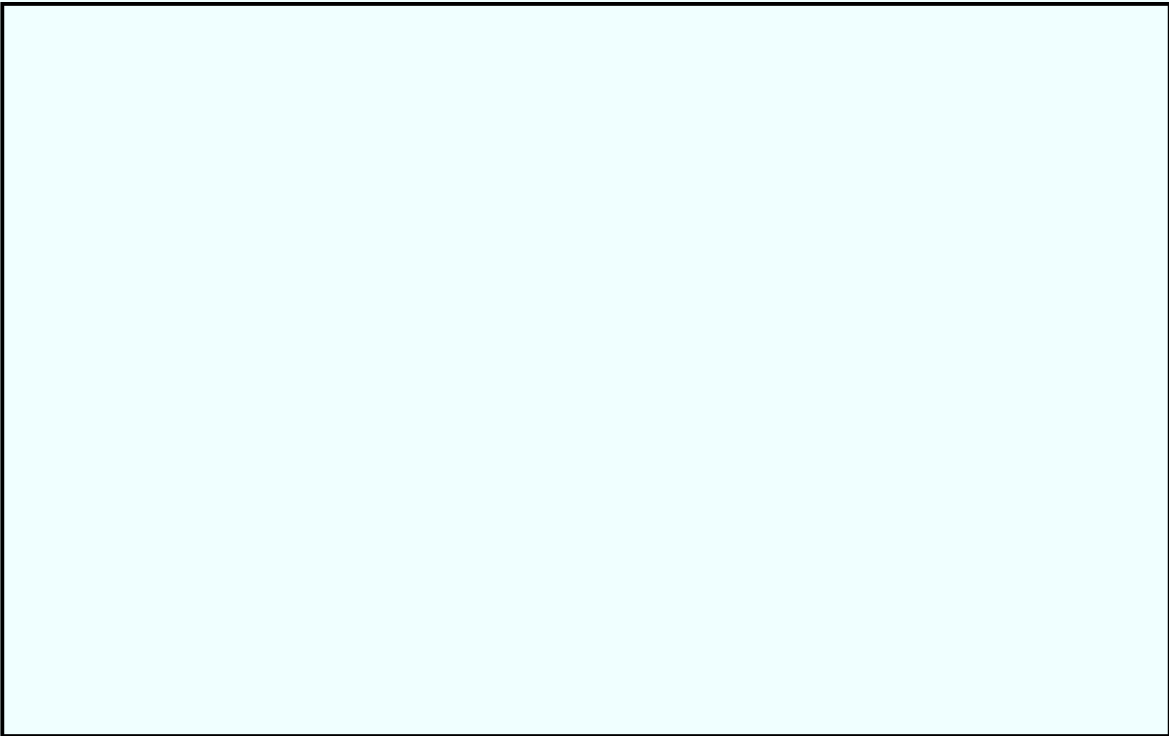
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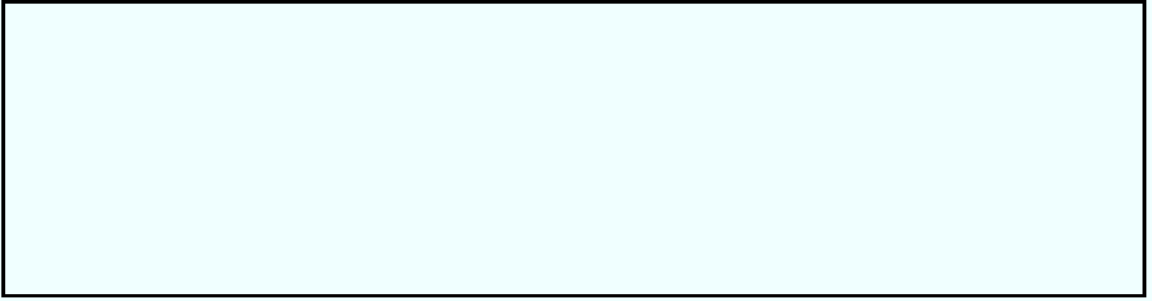


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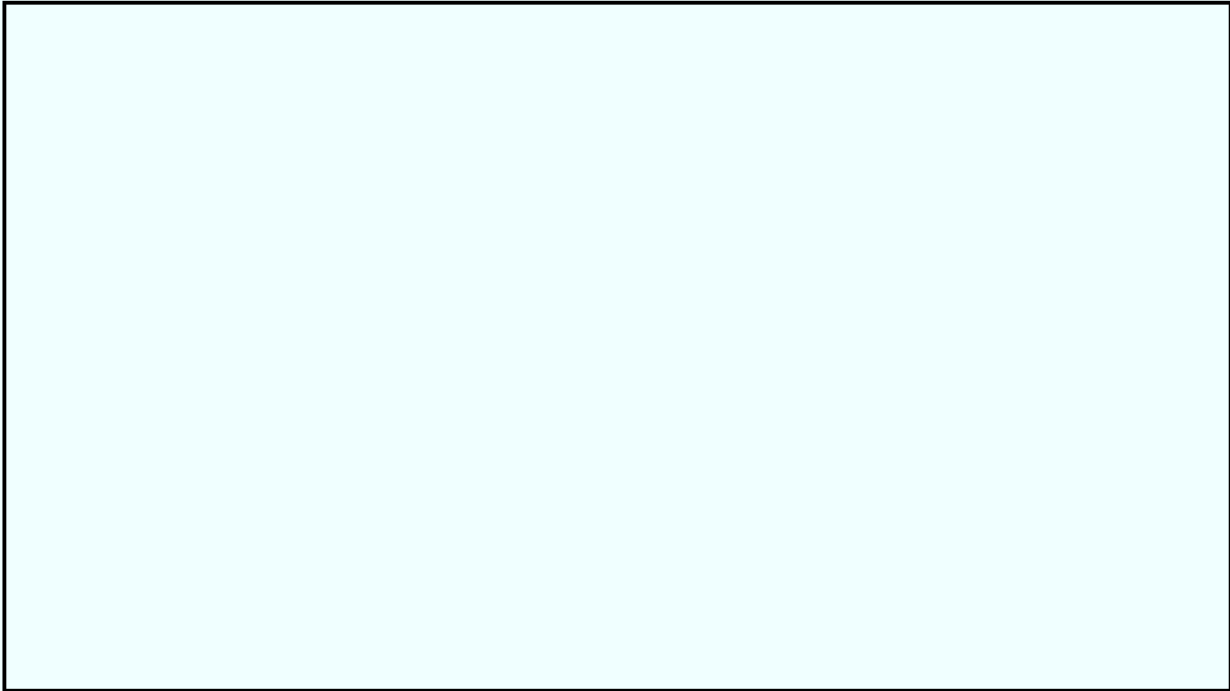


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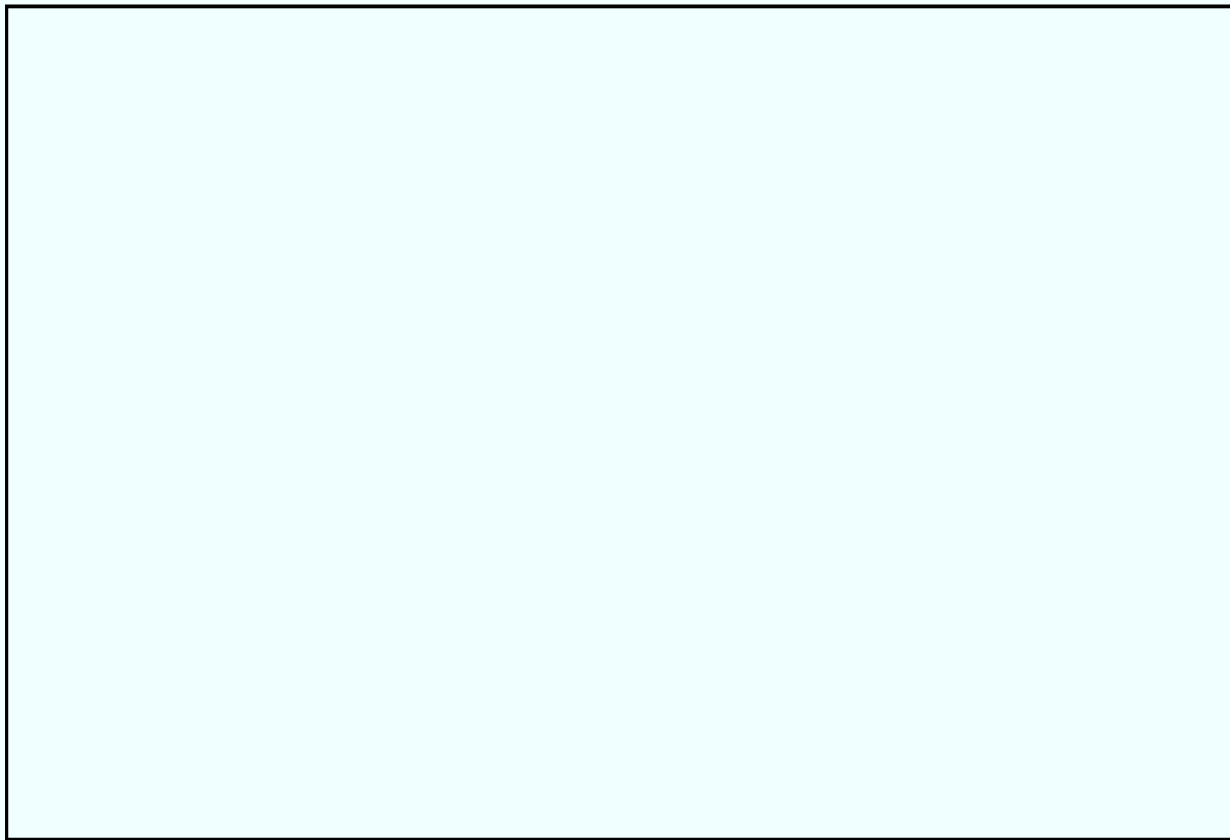


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USA PATRIOT Act and Libraries

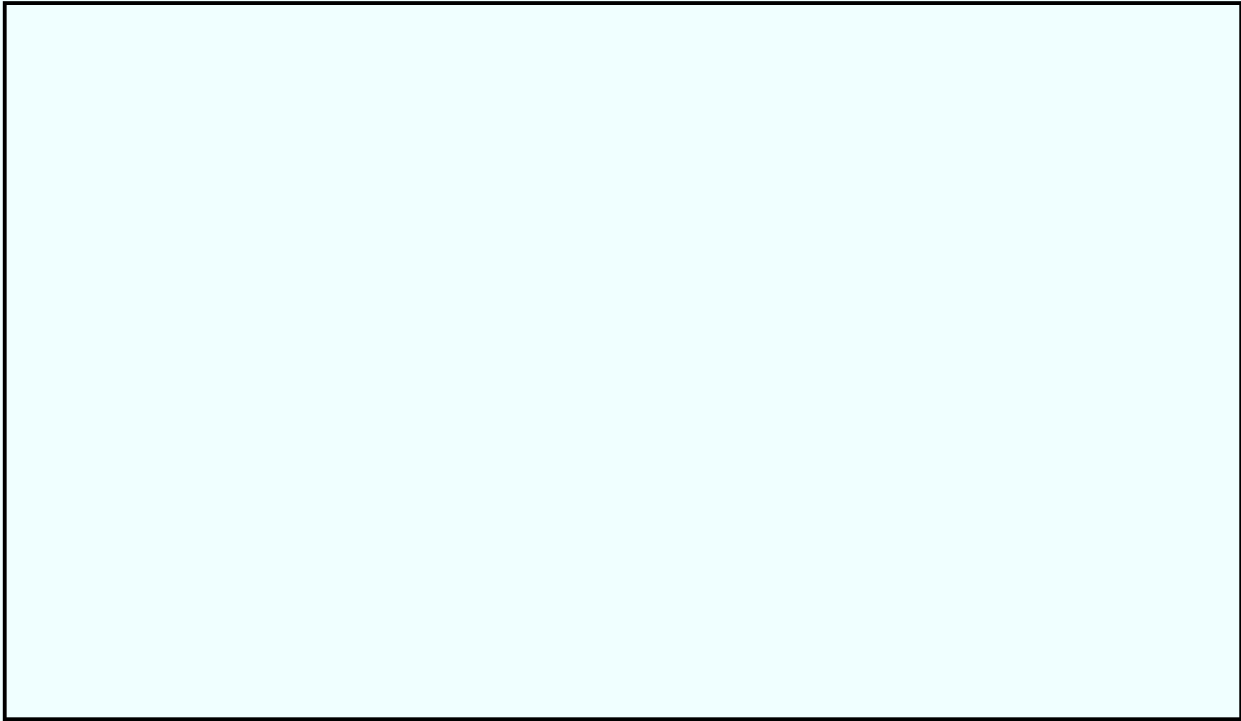


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(Draft responses to Sen. Judiciary Q's, 08/20/2002)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/29/2002

To: Counterterrorism
Counterintelligence

Attn: Section and Unit Chiefs
Section and Unit Chiefs

From: Office of the General Counsel
National Security Law Unit (NSLU)/Room [REDACTED]
Contact: [REDACTED]

Approved By: Bowman M E
[REDACTED]

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Drafted By: [REDACTED]

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Case ID #: 66F-HQ-A1247863 (Pending)

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Title: PROCEDURAL GUIDANCE RELATED TO
NEW FISA PEN REGISTER AUTHORITY

Synopsis: Summarizes FISA pen register/trap and trace authorities and reiterates procedures for requesting such authority.

Reference: 66F-HQ-A1247863 Serial 70

Administrative: This is a privileged FBI attorney communication; do not circulate outside the FBI without the permission of OGC.

Details: Changes to FISA pen register/trap and trace authorities under the "USA Patriot Act" were summarized in the above referenced electronic communication. In response to requests for clarification of procedures relating to requests for FISA pen register/trap and trace authorities, the National Security Law Unit (NSLU) is providing the following guidance.

I. Legal Basis for Initiation of FISA Pen Register/Trap and Trace

The "USA Patriot Act" revised the legal standard for initiating a FISA pen register/trap and trace.¹ These Orders are now available whenever the FBI certifies that "the information likely to be obtained is foreign intelligence information not concerning a United States person, or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such

¹ 50 U.S.C. § 1842

To: Counterterrorism From: Office of the General Counsel
Re: 66F-HQ-A1247863, 03/29/2002

investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution."²

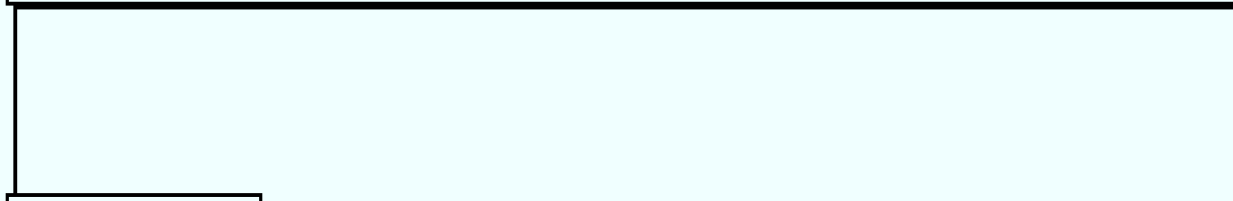
Use of this technique is authorized in full investigations properly opened under the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG). The FCIG require that full foreign counterintelligence investigations be personally authorized by the relevant Special Agent in Charge, or Assistant Special Agent in Charge with exclusive responsibility for a specific foreign counterintelligence program following written notification to FBIHQ.

II. Process for Obtaining Pen Register/Trap and Trace Authority

No procedural changes were required as the result of revisions made by the "USA Patriot Act." Requests for pen register/trap and trace authority should be submitted with an



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[redacted] and a brief statement explaining the nature of the investigation and the relevance to that investigation of the information sought through the pen register/trap and trace.

NSLU and OIPR plan to develop additional guidance to further streamline this process. Questions relating to these matters may be directed to Assistant General Counsel [redacted]

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² 50 U.S.C. § 1842(a)(1).

To: Counterterrorism From: Office of the General Counsel
Re: 66F-HQ-A1247863, 03/29/2002

LEAD(s) :

Set Lead 1: (Adm)

ALL RECEIVING OFFICES

Distribute to relevant personnel involved in FCI/IT investigations.

CC:

♦♦ 1 - Mr. Parkinson
1 - Mr. Bowman
1 - NSLU Attorneys

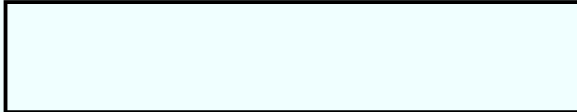


U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

July 16, 2002



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Dear 

Senator Barbara Mikulski requested the FBI to address your concerns regarding certain provisions of the "Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Patriot Act). I will address two sections of the law that are relevant to your inquiry.

First, section 215 of the Patriot Act amended the business records provision found in Title V of the Foreign Intelligence Surveillance Act. With passage of the Act, Congress established "relevance" to an investigation pertaining to international terrorism or clandestine intelligence activities as the legal standard for exercising this authority.¹ Thus, law enforcement authorities may seek a court order for the production of business records (including papers, documents, and other books and records from a business or other entity) provided that the records relate to an investigation properly authorized under the Attorney General Guidelines for FBI foreign counterintelligence investigations.²

Furthermore, the Patriot Act explicitly states in section 215 that no investigation of a United States person can be conducted solely upon the basis of activities protected by the First Amendment to the Constitution. The FBI does not base investigations on how persons exercise their First Amendment rights.

¹ The prior standard established by Congress was relevance and "specific and articulable" facts giving reason to believe that the person to whom the records related was an agent of a foreign power.

² This authority can be used to obtain records from libraries and bookstores although it is not designed specifically for application to any particular categories of institutions or businesses.

[REDACTED] b6

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Second, you referenced provisions in the law that apply to Internet Service Providers (ISPs). Under section 505 of the Patriot Act, Congress established the same legal standard for obtaining National Security Letters (NSLs) as it did for the business records authority. NSLs are administrative subpoenas which can be issued in foreign counterintelligence investigations properly authorized under guidelines issued by the Attorney General to obtain telephone and electronic communication records from telephone companies and ISPs, as well as records from financial institutions, and information from credit bureaus. Section 505 also states that no investigation of a United States person can be conducted solely upon the basis of activities protected by the First Amendment.

The FBI has significant experience in its foreign counterintelligence investigations with persons using public libraries for clandestine and anonymous communications via library Internet access. It is, therefore, critical that we have the ability to obtain records of those communications.

The laws which established the business record and the NSL authority contain provisions that prohibit officers, employees or agents of companies receiving such orders from disclosing to the individual under investigation or to persons outside the company the fact that the FBI has sought or obtained access to information or records. Such provisions are intended to protect the integrity of the lawfully authorized investigation.

The changes made by the Patriot Act were thoroughly discussed and considered by Congress before they were enacted and are designed to enhance our ability to safeguard national security. They represent, in our view, a principled approach to balancing individual liberties with public safety.

I hope this information is beneficial to your understanding of these important and timely issues.

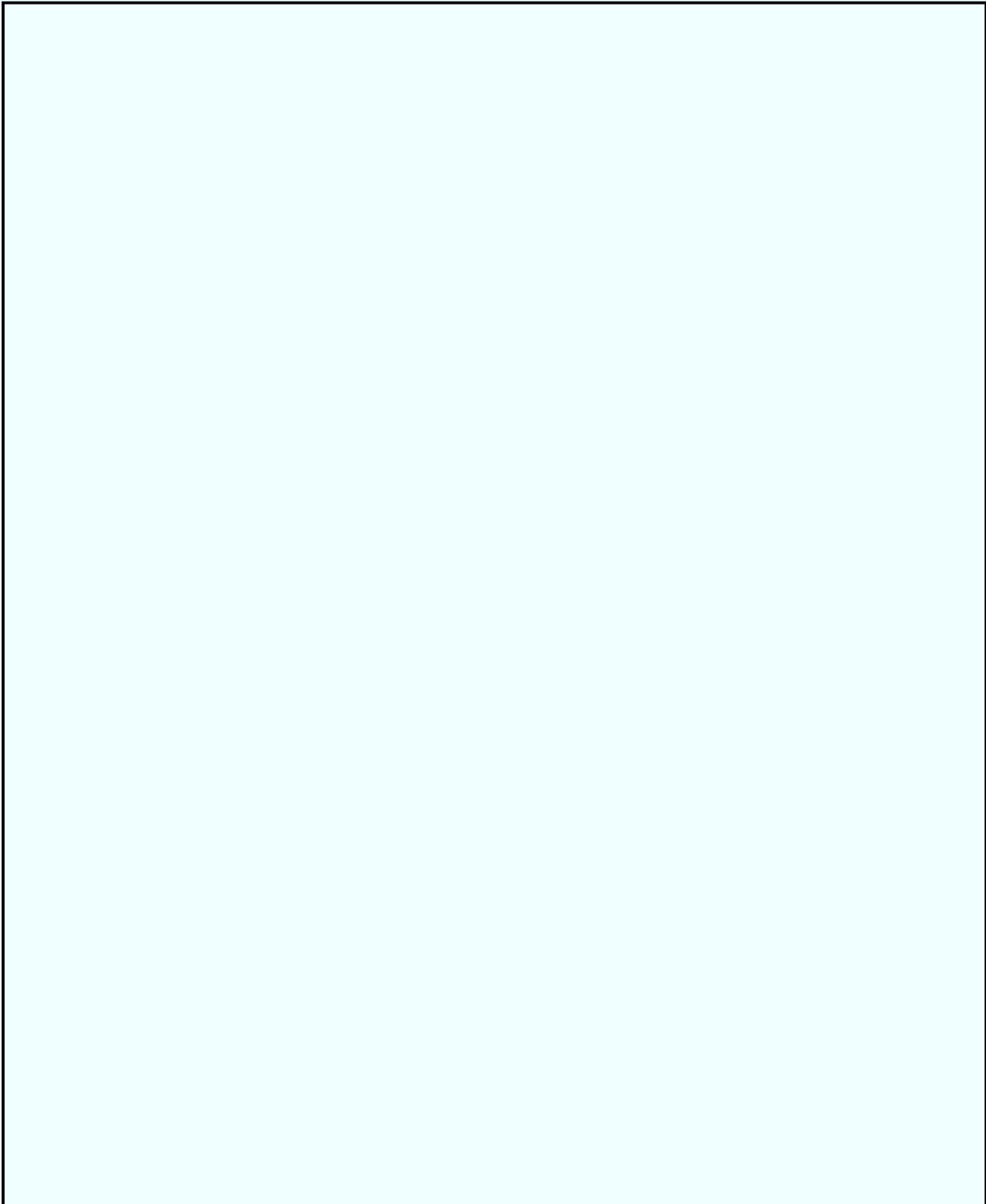
Sincerely yours,

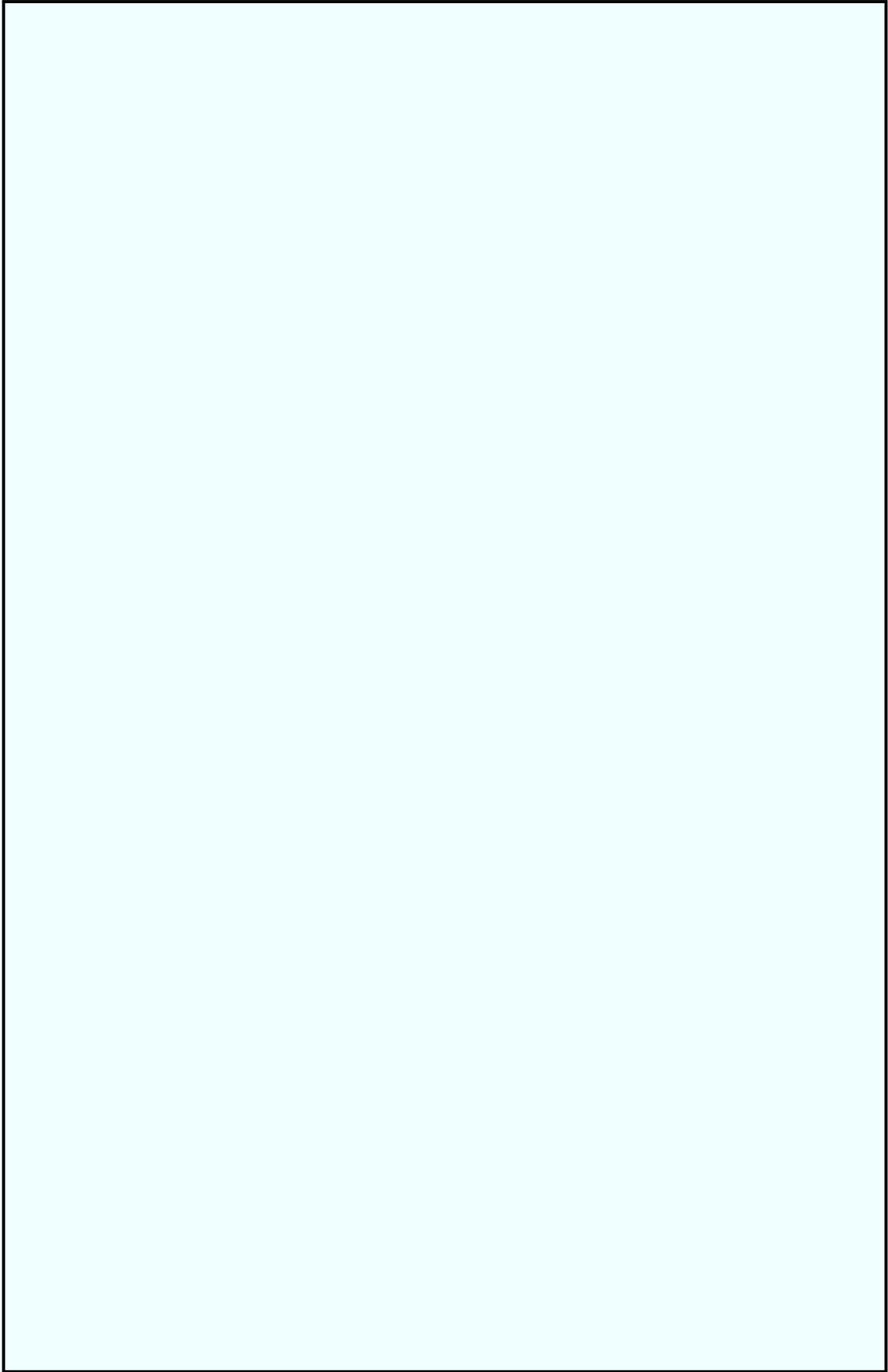
M. E. Bowman
Deputy General Counsel
National Security Law Branch

1 - [REDACTED] Staff Aide b6
U.S. Senator Barbara A. Mikulski b7C
Hart Senate Office Building, Suite 709
Washington, D.C. 20510-2003

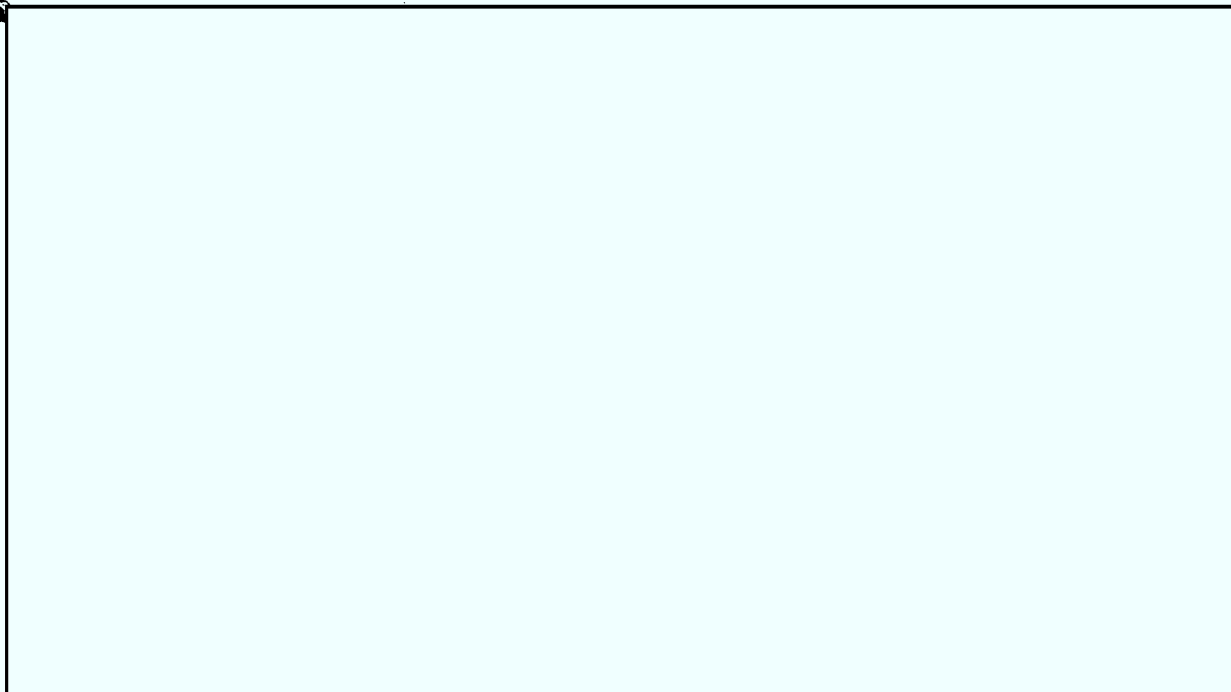
Library/Bookstore Records

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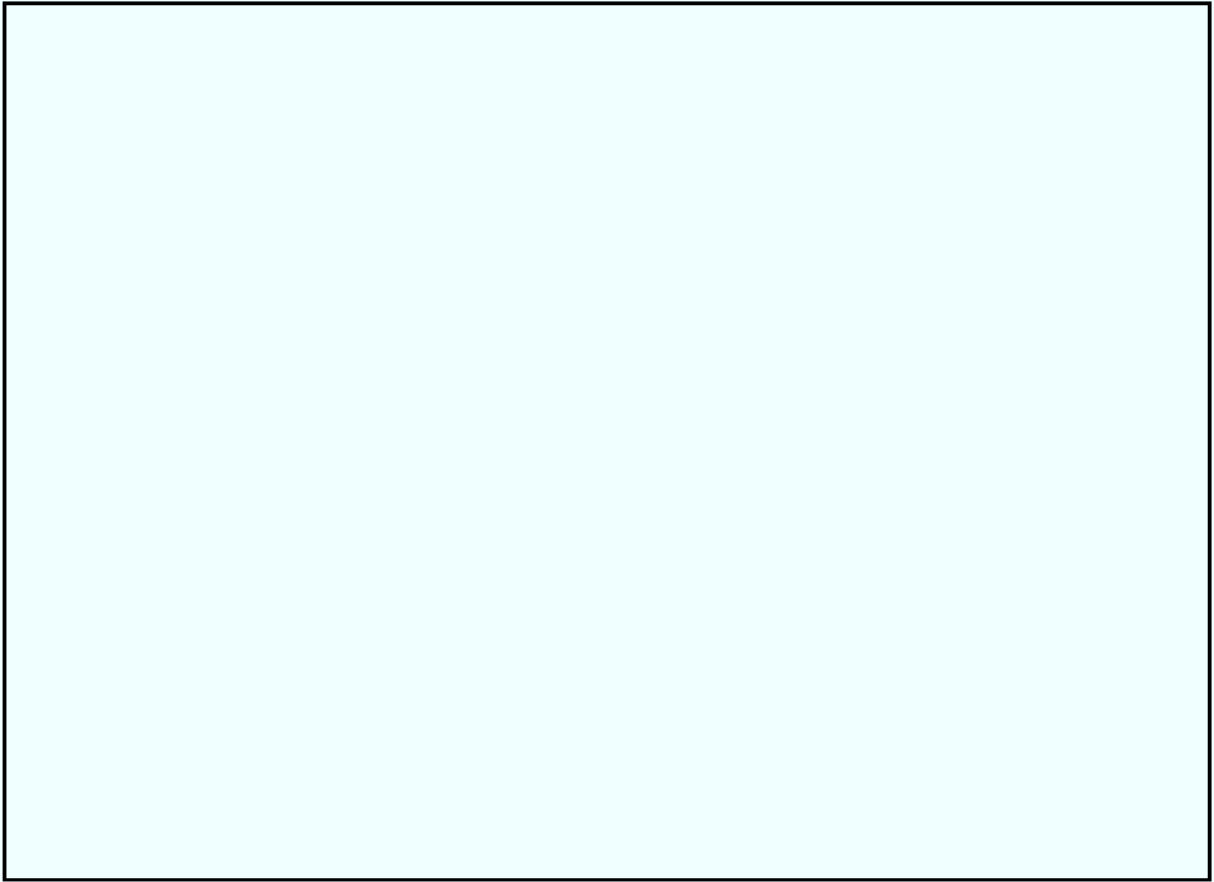


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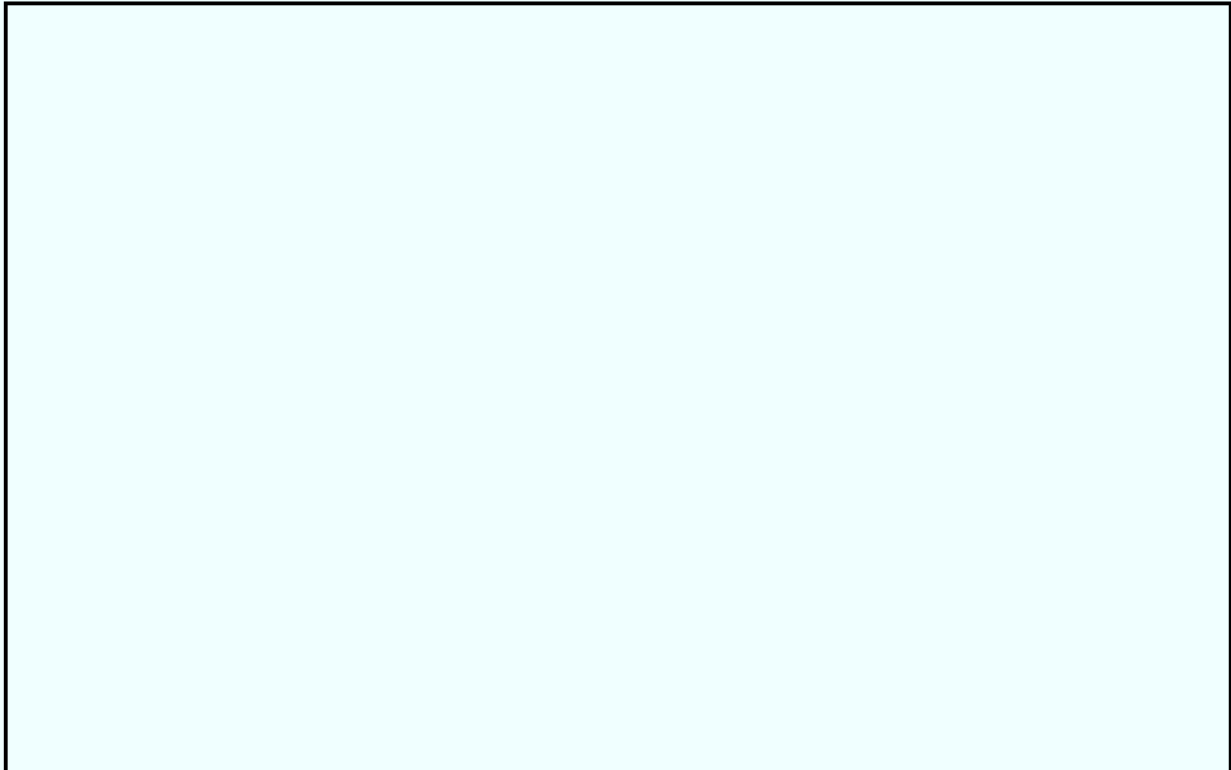
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(Draft QFRs, 01/30/2003)



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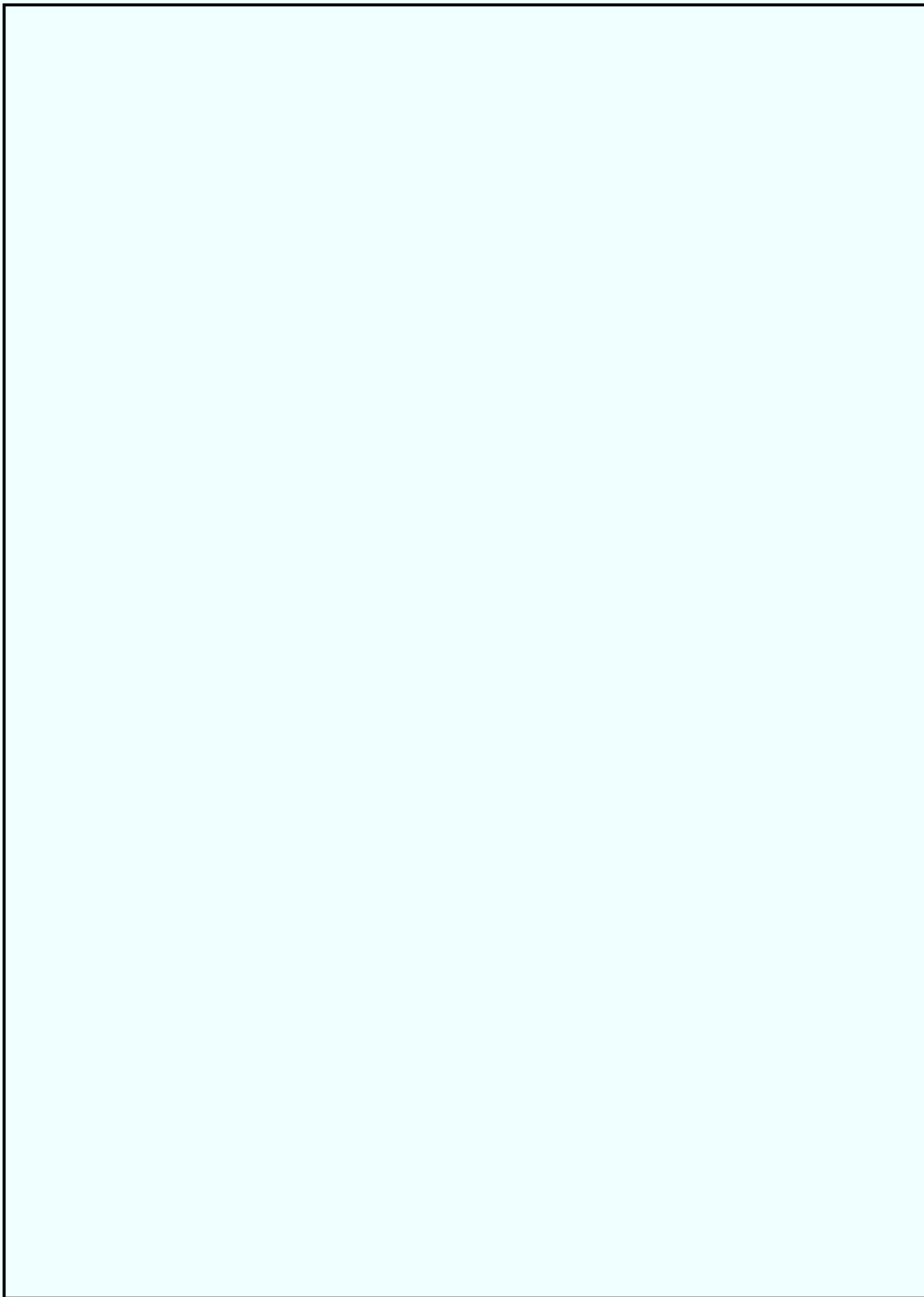
Questions from Senator Maria Cantwell



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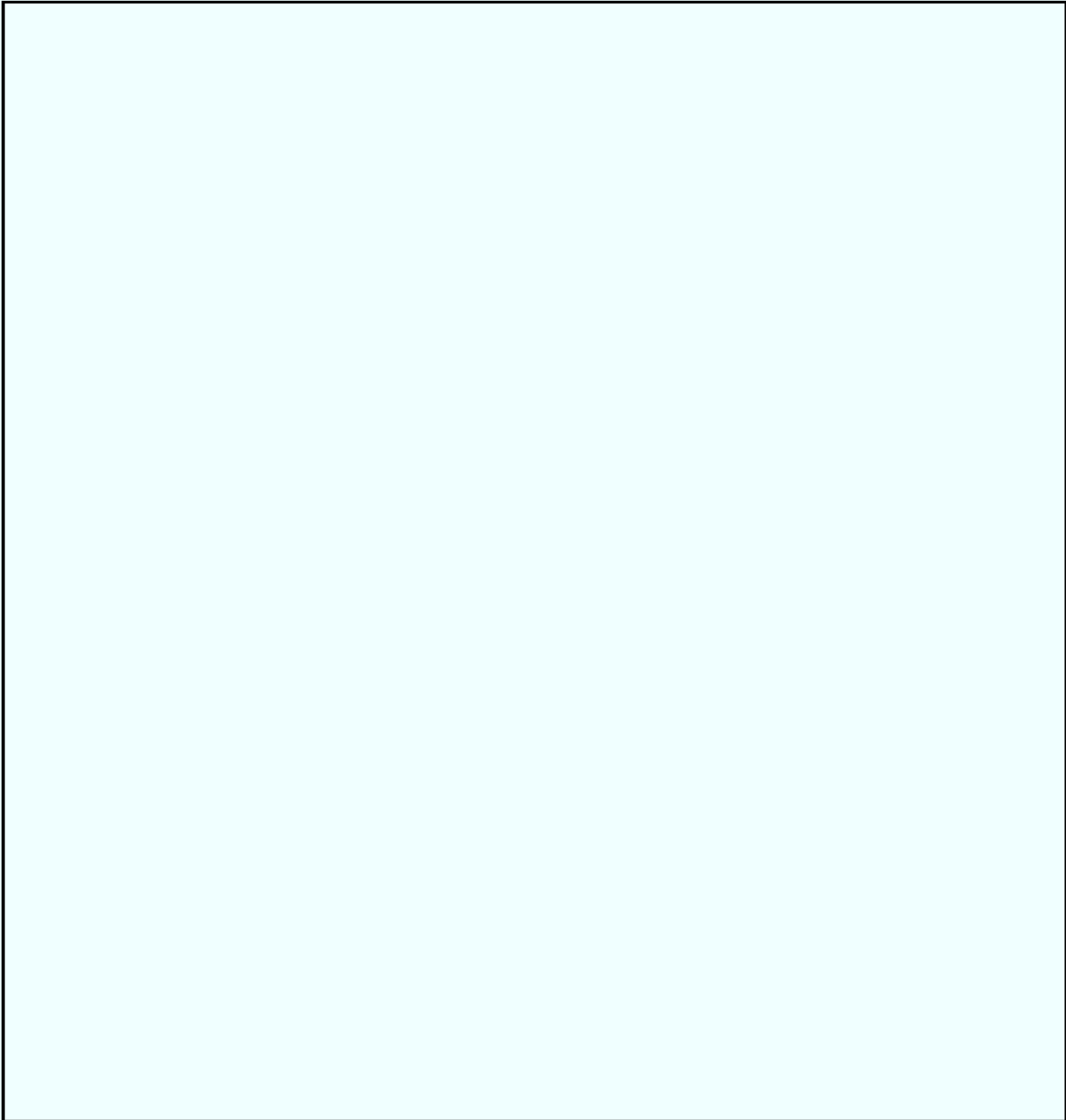


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Questions from Senator Russell Feingold

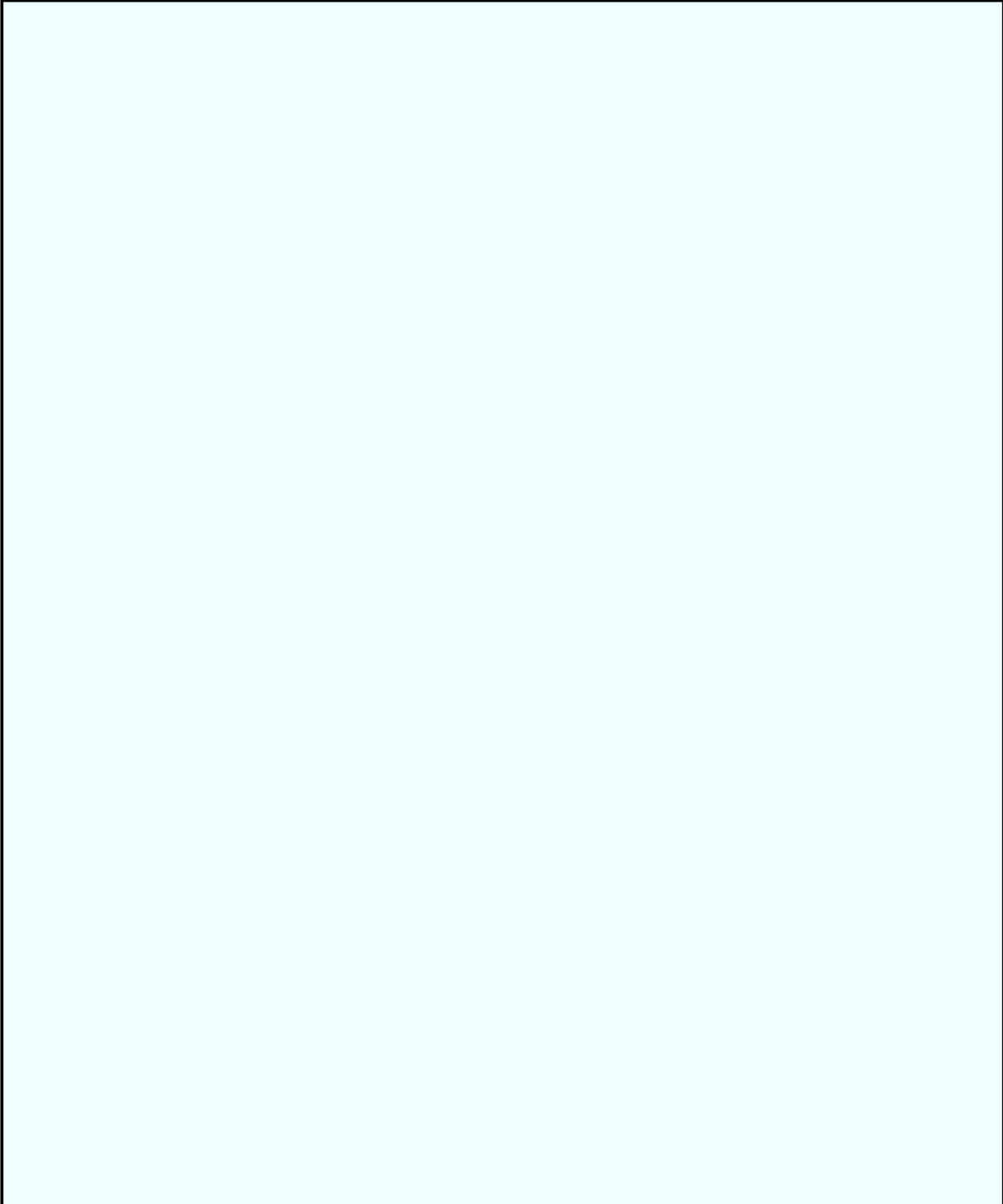


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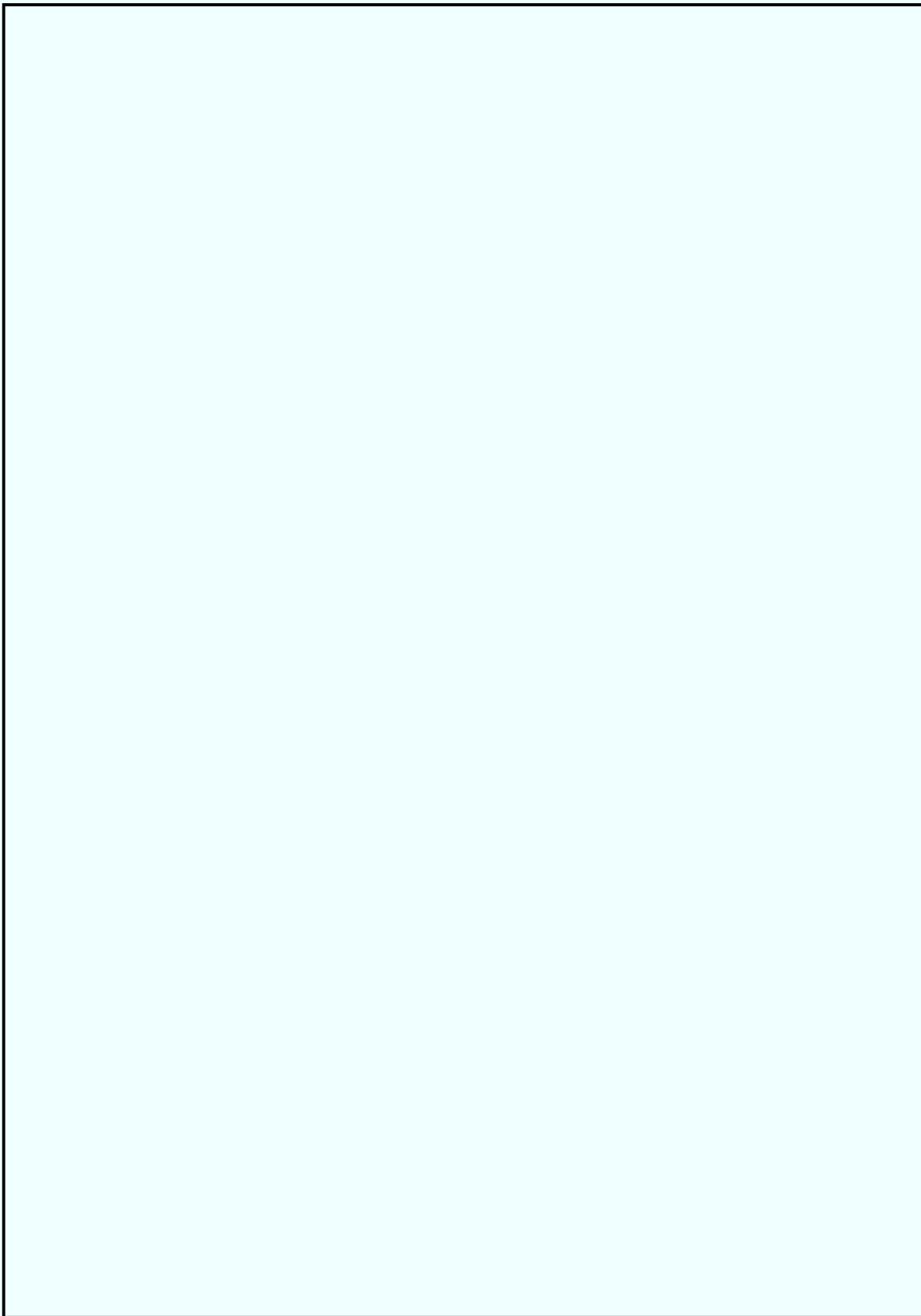
Questions from Senator Maria Cantwell



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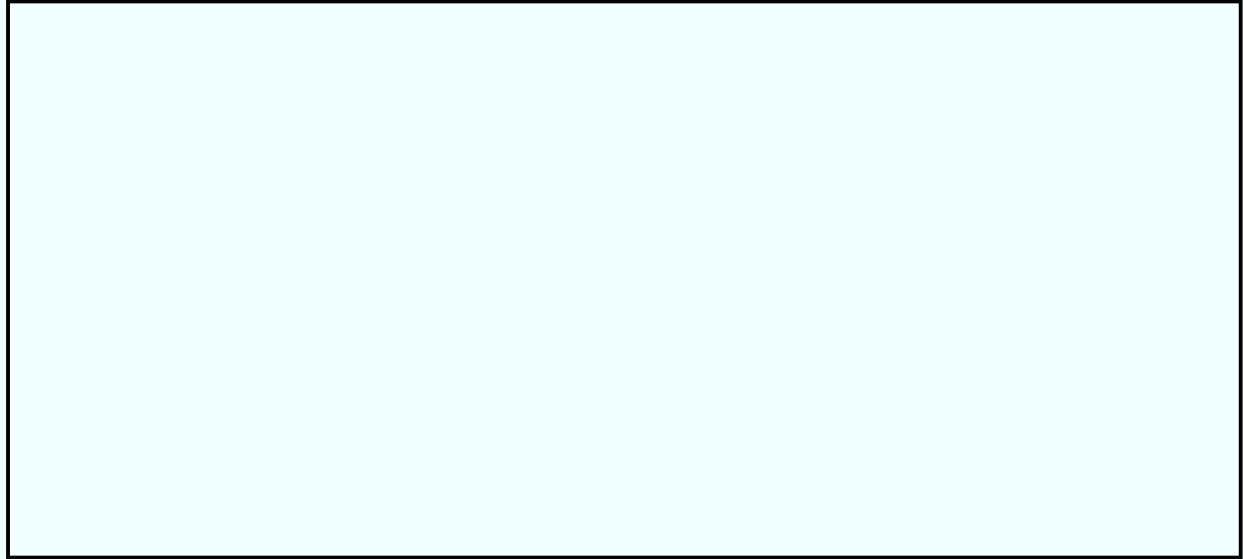


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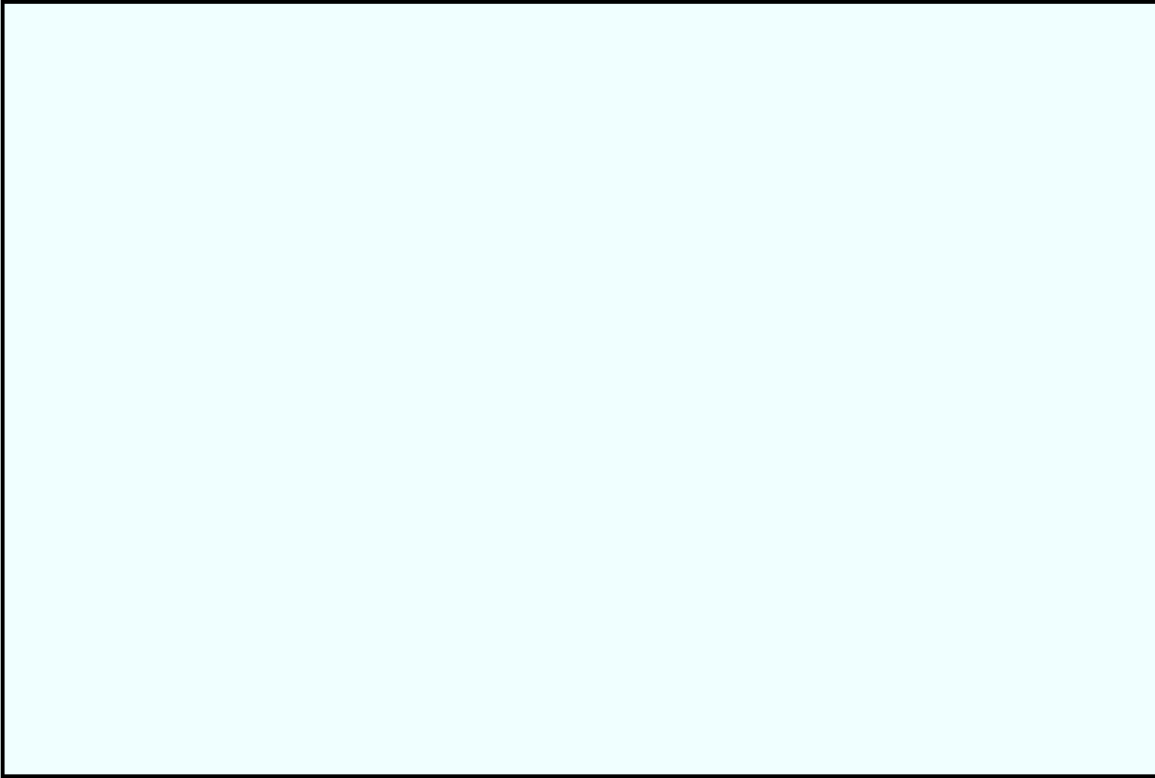
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(Draft responses to QFRs, 06/06/2002)

Questions from Senator Maria Cantwell

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(Draft response to Sen. Cantwell, 01/24/2003)

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DATE 09-09-2005 BY 655179 DMH/ELH 05-cv-0845

[REDACTED] (OGC) (FBI)

From: THOMAS, JULIE F. (OGC) (FBI)
Sent: Thursday, March 10, 2005 6:01 PM b6
To: [REDACTED] (OGC) (FBI) b7C
Cc: [REDACTED] (OGC) (FBI)
Subject: Just getting back to you

UNCLASSIFIED
NON-RECORD

[REDACTED] b2 b7E

I wanted to get back with you regarding my meeting with [REDACTED] this morning. We discussed [REDACTED] and their lack of movement. She admitted she has a stack of them on her desk because she removed them from [REDACTED] review. She hopes to have all of them reviewed by Monday. I am hopeful we will start to see movement again. We will see. I reminded her that Valerie has got to testify about our use of these probably in mid-April. I believe [REDACTED] will do her best, she is simply a voice crying out in the wilderness over there. b6 b7C

On the threat list, where do we stand? Who is your contact in the substantive units? Keep me in the loop.

*Julie F. Thomas
DGC, National Security Law Branch
Office of the General Counsel
Room 7975
202-324-8528
202-324-1023 (fax)
Julie.Thomas@ic.fbi.gov*

UNCLASSIFIED

6/17/2005

[REDACTED]

(OGC) (FBI)

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DATE 09-09-2005 BY 65179 DMH/ELH 05-cv-0845

From: GULYASSY, ANNE M. (OGC) (FBI)

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Sent: Wednesday, October 20, 2004 9:16 AM

b7C

To: THOMAS, JULIE F. (OGC) (FBI); [REDACTED]

Cc: [REDACTED] (OGC) (FBI)

Subject: FW: ACLU's Position with regard to Section 215 of the PATRIOT Act:

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[REDACTED] found this article in connection with ACLU's FOIA suits, but I thought you would find it interesting in terms of its discussion of Section 215 and NSLs generally. Anne

-----Original Message-----

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From: [REDACTED] (OGC) (FBI)

b7C

Sent: Tuesday, October 19, 2004 6:32 PM

To: [REDACTED] HARDY, DAVID (RMD) (FBI);
[REDACTED] GULYASSY, ANNE M. (OGC) (FBI); BOWMAN, MARION E. (OGC) (FBI)

Subject: ACLU's Position with regard to Section 215 of the PATRIOT Act:

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NON-RECORD

I thought you would all find interesting the attached article in pdf I came across last night as I was surfing through the ACLU's website.

[REDACTED]

[REDACTED]

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Assistant General Counsel

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Office of the General Counsel

b7C

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SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

6/17/2005

[REDACTED] (OGC) (FBI)

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Wednesday, March 30, 2005 11:51 AM
To: [REDACTED] (OCA) (FBI)
Cc: KALISCH, ELENI P. (OCA) (FBI); [REDACTED] (OGC) (FBI)
Subject: RE: Background Info for upcoming Patriot Act Hearings

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OIPR is compiling the numbers. Because DOJ is asking for the numbers through 3/31 the numbers will not be final until Friday. I will let OIPR know that we need the numbers ASAP.

In terms of the the background info, I think OIPR is doing that too.

-----Original Message-----

From: [REDACTED] (OCA) (FBI)
Sent: Wednesday, March 30, 2005 11:43 AM
To: Caproni, Valerie E. (OGC) (FBI)
Cc: KALISCH, ELENI P. (OCA) (FBI); [REDACTED] (OGC) (FBI)
Subject: Background Info for upcoming Patriot Act Hearings

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DATE 09-09-2005 BY 65179 DMH/ELH 05-cv-0845

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NON-RECORD

Valerie - just to follow-up on our conversation yesterday re the DOJ decision to declassify certain data re use of specific provisions. Is OGC compiling #s (10/26/01 - 3/31/05) for the following provisions as enumerated in the draft Baker memo?

1. # of orders under §206 (roving fisa surveillance)
2. # of attorney hours at OIPR as a result of §207 extensions
3. # of PR/TT orders under §214
4. # of orders under §215 (business records) - DOJ is planning to declassify total and #s within categories [REDACTED] info in conjunction with PR/TT.

b2 b7E

The draft memo would declassify # of orders approved by the Court. I'm assuming that the total # of orders requested (either requested by FBI and not approved by DOJ or requested by DOJ and not approved by the Court) will remain classified?

Is OGC compiling background info re the cases approved in these categories? (i.e. if there were X §215 orders approved, can we identify the X cases and give the Director some background info?)

Sorry if this is redundant based on our conversation, but I wanted to confirm what info is being gathered. Thanks,

[REDACTED]
Office of Congressional Affairs

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6/17/2005

[REDACTED] OGC) (FBI)

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DATE 09-09-2005 BY 65179 DMH /ELH 05-CV-0845

From: [REDACTED] (OCA) (FBI)
Sent: Wednesday, March 30, 2005 11:43 AM b6
To: Caproni, Valerie E. (OGC) (FBI) b7C
Cc: KALISCH, ELENI P. (OCA) (FBI) [REDACTED] (OGC) (FBI)
Subject: Background Info for upcoming Patriot Act Hearings

UNCLASSIFIED
NON-RECORD

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4. # of orders under §215 (business records) - DOJ is planning to declassify total and #s within categories - i.e. [REDACTED] info in conjunction with PR/TT. b2 b7E

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Sorry if this is redundant based on our conversation, but I wanted to confirm what info is being gathered. Thanks,

[REDACTED]
Office of Congressional Affairs b2
[REDACTED] b6
b7C

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6/17/2005

[REDACTED] (OGC) (FBI)

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DATE 09-09-2005 BY 65179 DMH/ELH 05-cv-0845

From: [REDACTED] (OGC) (FBI) b6
Sent: Thursday, March 17, 2005 12:55 PM b7C
To: [REDACTED] (OGC) (FBI) [REDACTED] (OGC) (FBI)
Cc: [REDACTED]

Subject: Patriot act provision re: public libraries

UNCLASSIFIED
NON-RECORD

CTD is assisting Office of Congressional Affairs prepare the Director for testimony re: patriot act and its sunset provision (December, 2005?). You are probably going to be getting questions about success stories related to the changes made by the Act. One question I have gotten is about the provision permitting the FBI to review records at a public library. CTD is having difficulty determining if this was ever utilized. Does anyone know?

I haven't even been able to determine what the procedure would have been for anyone seeking to use this provision, does anyone know what the process would be?

[REDACTED]
NSLB - CTLU 1

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6/17/2005

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DATE 09-09-2005 BY 65179 DMH/ELH 05-cv-0845

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI) b6
Sent: Thursday, March 17, 2005 7:30 AM b7C
To: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI)
Subject: RE: Draft Testimony re Patriot Act

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NON-RECORD

Here is the e-mail which [REDACTED] is responding to b6 b7C

Do we have PATriot Act successes.

-----Original Message-----

From: [REDACTED] (OCA) (FBI)
Sent: Wednesday, March 16, 2005 2:49 PM
To: [REDACTED] (OGC) (FBI)
Cc: [REDACTED] Caproni, Valerie E. (OGC) (FBI)
Subject: RE: Two things

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NON-RECORD

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[REDACTED] it sounds like you've got the ticket to start drafting testimony for the Director to use for the Senate Judiciary Committee Patriot Act hearing scheduled for 4/5/2005. See attached e-mail to GC Caproni with relevant dates - OCA needs to see a draft of the testimony by Tues, 3/22.

b5

Give me a call to discuss. Thanks,

[REDACTED]
National Security Law Policy and Training Unit
FBI HQ Room [REDACTED]

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-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Thursday, March 17, 2005 7:26 AM
To: [REDACTED] (OGC) (FBI);

6/17/2005

[redacted] (OGC) (FBI)
Subject: RE: Draft Testimony re Patriot Act

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NON-RECORD

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Could you get operational examples for ^{b7C} for this project which we are doing for Congressional Affairs.

[redacted]

National Security Law Policy and Training Unit
 FBI HQ Room [redacted]

[redacted]

-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Wednesday, March 16, 2005 3:39 PM b6
To: [redacted] (OCA) (FBI) b7C
Subject: RE: Draft Testimony re Patriot Act

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[redacted]

If you need operational examples please get them through [redacted]

[redacted]

National Security Law Policy and Training Unit
 FBI HQ Room [redacted]

[redacted]

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-----Original Message-----

From: [redacted] (OCA) (FBI) b6
Sent: Wednesday, March 16, 2005 3:36 PM
To: [redacted] (OGC) (FBI) b7C
Cc: [redacted] (OGC) (FBI); Caproni, Valerie E. (OGC) (FBI); KALISCH, ELEN I. P. (OCA) (FBI); THOMAS, JULIE F. (OGC) (FBI)
Subject: Draft Testimony re Patriot Act

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[redacted] attached is some info that might assist in drafting testimony.

1. Testimony of RSM 2004 - the Patriot Act was just a piece of more general testimony, but this gives you a flavor of the tone of his testimony.
2. Sunsets Report Final Draft - I expect that the AG's testimony for the 4/5 hearing will draw heavily from this document that was prepared by DOJ OLP. For that reason and because it primarily is a legal analysis (v. practical), I don't think that we should rely heavily on it, but it

might be helpful.

3. DOJ Patriot Act Report - I think Section II of this report might be a good place to start. It contains some examples, but they might be a bit tired / overused. See next doc for additional examples.

4. Sunset - field input - This doc was based on an OGC survey and contains case examples for many of the provisions. The problem is that DOJ will not clear testimony that has pending case examples... still, there might be something that we can use.

After you've had a chance to review, please give me a call and we can chat.



Office of Congressional Affairs

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FOIPA
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Page 134 ~ Duplicate



Patriot Act

- I. The USA PATRIOT Act has proved invaluable in helping the FBI's mission of fighting terrorism in the United States and abroad.
 - A. It has torn down the wall between the FBI criminal and intelligence investigators by allowing the timely sharing of information to fight terrorism collectively.
 - B. It has increased the sharing of information between the FBI and other intelligence agencies.
 - C. It has permitted the sharing of grand jury and Title III information with intelligence officials.
 - D. It has permitted Special Agents in Charge of the field offices to issue National Security Letters (NSLs) for telephone/toll records, electronic communications records, subscriber information, financial records, and certain credit information under a standard of "relevance" to an authorized national security investigation.
 - E. It has lowered the standard for a FISA pen register/trap & traces to "relevance" to an authorized investigation; coupled with revisions to the Attorney General's Guidelines for National Security Investigations, this allows for use of pen registers/trap & trace in Preliminary Investigations.
 - F. It has permitted the use of roving FISA wiretaps.
 - G. It has given federal judges authority to issue search warrants that are valid outside the issuing judge's district in terrorism investigations.
 - H. It has given FBI investigators authority to obtain full credit reports via a NSL-type letter for terrorism investigations.
 - I. It has increased the number of FISA judges from seven to 11 to help accommodate the increased number of counterterrorism FISAs; and
 - J. It has amended the material support to terrorism statutes to expand the FBI's ability to arrest financial supporters of terrorism.
- II. Retain intelligence provisions in the PATRIOT Act that are subject to sunset
 - A. Sec. 201. Authority to intercept wire, oral, and electronic communications

relating to terrorism

- B. Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses.
- C. Sec. 203. Authority to share criminal investigative information.
- D. Sec. 203(b) (Title III) and (d) (Grand Jury)
- E. Sec. 204. Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications.
- F. Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978.
- G. Sec. 207. Duration of FISA surveillance of non-United States persons who are agents of a foreign power.
- H. Sec. 212. Emergency disclosure of electronic communications to protect life and limb.
- I. Sec. 214. Pen register and trap and trace authority under FISA.
- J. Sec. 215. Access to records and other items under the FISA.
- K. Sec. 217. Interception of computer trespasser communications.
- L. Sec. 218. Foreign intelligence information. Section 218 is the section that sets the "significant purpose" standard in FISA. Should section 218 expire, the November 18, 2002 FISA Court of Review Opinion would become the legal standard for the initiation and continuation of FISA searches and surveillances. The Court of Review upheld the "significant purpose" standard, but absent the language of the USA PATRIOT Act, the purpose of FISA searches and surveillance will become intelligence collection, no matter what other purpose may exist. It can be argued that this change would be a narrower, more restrictive standard than the USA Patriot Act created."

III. What other legislative changes are needed?

- A. National Security Letters (NSLs)
 - 1. Create an enforcement mechanism.
 - a. The statutes providing for NSLs lack enforcement provisions. As a result, some record holders do not comply. Changes to the NSL statutes are already being considered by DOJ due to



Patriot Act

- I. The USA Patriot Act has proved invaluable in helping the FBI's mission to fight terrorism in the United States and abroad.
 - A. It has torn down the wall between the FBI criminal and intelligence investigators by allowing the timely sharing of information to fight terrorism collectively.
 - B. It has increased the sharing of information between the FBI and other intelligence agencies.
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- C. Sec. 203. Authority to share criminal investigative information.
- D. Sec. 203(b) (Title III) and (d) (Grand Jury)
- E. Sec. 204. Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications.
- F. Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978.
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- H. Sec. 212. Emergency disclosure of electronic communications to protect life and limb.
- I. Sec. 214. Pen register and trap and trace authority under FISA.
- J. Sec. 215. Access to records and other items under the FISA.
- K. Sec. 217. Interception of computer trespasser communications.
- L. Sec. 218. Foreign intelligence information. Section 218 is the section that sets the "significant purpose" standard in FISA. It should be noted that should this expire, the November 18, 2002, FISA Court of Review Opinion would set the FISA standard. The Court of Review upheld the "significant purpose" standard, but if the Patriot Act goes away, you would be left with the Court of Appeals standard that a purpose be intelligence, no matter what other purpose you have. It could be argued that this standard is lower than the Patriot Act.

III. What other legislative changes are needed?

- A. Amend FISA Statute 1806(b) and 1825(c) required caveats.
 - 1. Revise the FISA caveat requirement so that FISA-derived information may be shared for terrorism screening and "lead purposes" without the need to include a statement that such information may only be used in a criminal proceeding with the advance authorization of the AG. In the current era of information sharing, inclusion of this language is a red flag signaling the use of FISA techniques. Moreover, if the information is disseminated only

[REDACTED] (OGC) (FBI)

From: [REDACTED] (INSD) (FBI)

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Sent: Wednesday, July 21, 2004 8:21 AM

To: FOGLE, TONI M. (INSD) (FBI); [REDACTED] (INSD) (FBI); [REDACTED] (OPR) (FBI); [REDACTED] (OPR) (FBI); [REDACTED] (OPR) (FBI)

Cc: [REDACTED] (INSD) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED]

Subject: RE: Questions for the Record from Director's 5/20/04 Senate Hearing

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CA# 05-CV-0845

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[REDACTED]
We no longer have to reply to the last question re non-content communications.

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-----Original Message-----

From: FOGLE, TONI M. (INSD) (FBI)

Sent: Tuesday, July 20, 2004 8:24 PM

To: [REDACTED] (INSD) (FBI); [REDACTED] (OPR) (FBI); [REDACTED] (OPR) (FBI); [REDACTED] (OPR) (FBI)

Cc: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (INSD) (FBI); [REDACTED] (INSD) (FBI)

Subject: Questions for the Record from Director's 5/20/04 Senate Hearing

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NON-RECORD

[REDACTED] (system search) --

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I have been asked to respond to an urgent request from OCA -- and I need to know the following:

Has the FBI (they also ask about DOJ and DCI -- but I wouldn't even know where to go to get those responses)

--received any complaints regarding the application or implementation of Section 203 of the USA-Patriot Act?

--received any complaints regarding the application or implementation of Section 206 of the USA-Patriot Act?

--received any complaints regarding the application or implementation of Section 207 of the USA-Patriot Act?

--received any complaints regarding the application or implementation of Section 209 of the USA-Patriot Act?

--received any complaints regarding the application or implementation of Section 212 of the USA-Patriot Act?

--received any complaints regarding the application or implementation of Section 215 of the USA-Patriot Act?

7/21/2004

Act?

--received any complaints regarding the application or implementation of Section 217 of the USA-Patriot Act?

--received any complaints regarding the application or implementation of Section 218 of the USA-Patriot Act?

--received any complaints regarding the application or implementation of Section 220 of the USA-Patriot Act?

If so, describe the disposition of any such complaint.

We were also asked to respond to the following question -- but I'm not sure we are the appropriate responding entity:

"Has the Intelligence Community, Department of Justice, or Federal Bureau of Investigation developed regulations or directives defining the meaning of non-content communications? If such regulations or directives have been issued, please provide copies to the Committee."

Please let me know positive and negative fast -- (we were missed in the original dissemination).

- I copied you guys just in case you knew of something out there we weren't aware of.}

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b7C

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[redacted] (OGC) (FBI)

From: FOGLE, TONI M. (INSD) (FBI)

Sent: Tuesday, July 20, 2004 8:24 PM

To: [redacted] (INSD) (FBI) [redacted] (OPR) (FBI) [redacted] (OPR) (FBI) [redacted] (OPR) (FBI)

Cc: [redacted] (OGC) (FBI) [redacted] (OGC) (FBI) [redacted] (INSD) (FBI) [redacted] (INSD) (FBI)

Subject: Questions for the Record from Director's 5/20/04 Senate Hearing

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CA# 05-CV-0845

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--received any complaints regarding the application or implementation of Section 218 of the USA-Patriot Act?

--received any complaints regarding the application or implementation of Section 220 of the USA-Patriot Act?

If so, describe the disposition of any such complaint.

We were also asked to respond to the following question -- but I'm not sure we are the appropriate responding entity:

"Has the Intelligence Community, Department of Justice, or Federal Bureau of Investigation developed regulations or directives defining the meaning of non- content communications? If such regulations or directives have been issued, please provide copies to the Committee."

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7/21/2004

FEDERAL BUREAU OF INVESTIGATION

Precedence: DEADLINE 07/19/2004

Date: 06/09/2004

To: Counterterrorism	Attn: AD Bald DAD Harrington
General Counsel	Attn: [REDACTED] General Counsel Caproni DGC Kelley
International Operations	Attn: SAC Fuentes b6
Laboratory	Attn: AD Adams b7C DAD Hildebrand
CJIS	Attn: AD Kirkpatrick DAD Hooks
Director's Office	Attn: CIO Azmi Acting OPR AD Dzwilewski
Office of Intelligence	Attn: EAD Baginski [REDACTED]
Security	Attn: AD Phalen DAD Berkin
Criminal Investigative	Attn: Acting AD Lewis DAD Swecker
Counterintelligence	Attn: AD Szady DAD Andress
Records Management	Attn: AD Hooton DAD Hendershot

From: Office of Congressional Affairs
Room 7240
Contact: [REDACTED]

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DATE 08-18-2005 BY 65179 DMH/CLS
CA# 05-CV-0845

Approved By: Powers Richard C

Drafted By: [REDACTED]

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Case ID #: 62F-HQ-1077726 Serial 321

Title: QUESTIONS FOR THE RECORD FOLLOWING
THE DIRECTOR'S MAY 20, 2004 HEARING
BEFORE THE SENATE JUDICIARY COMMITTEE

Synopsis: To request responses to Questions for the Record submitted by the Senate Committee on the Judiciary following the Director's 5/20/04 oversight hearing.

Details: The Senate Committee on the Judiciary has posed many Questions for the Record based on the Director's 5/20/04 oversight hearing. Those questions are provided, verbatim, below, along with an indication of the Division we believe most likely to possess responsive information. Many of these

To: Counterterrorism From: Office of Congressional Affairs
Re: 62F-HQ-1077726, 06/09/2004

questions have subparts. If no assignment is made with respect to the subparts of a given question, they are to be answered with the main question. If you believe a specific question would be more appropriately directed to another entity, please contact [] ext. [] for reassignment of the question.

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Please make every effort to avoid classified responses. If a classified response is necessary, please clearly mark that information so that it can be transmitted to the Committee separately. In addition, if pending case information will be involved, please indicate any such information that would preclude us from answering. These responses will be coordinated with DOJ before transmission to the Committee.

The Committee's questions follow.

Questions Posed by Senator Hatch

On May 24, 2004, the FBI National Press Office issued a press release regarding the misidentification and release from custody of Brandon Mayfield. I am concerned that the FBI arrested an American citizen, incarcerated him, and subsequently released him from custody because of a misidentified fingerprint.

1. Laboratory Division (LD) (in coordination with the Counterterrorism Division (CTD)). In order to more fully understand this issue, please provide a chronology of events leading up to the misidentification of Mr. Mayfield. Include in this chronology an explanation of the events leading up to the initial identification of Brandon Mayfield as well as the circumstances that led to acknowledgement that Mayfield had been misidentified. Specifically, what efforts were made to secure the original or best fingerprint evidence? How many requests were made? Was there any attempt to utilize the actual prints held by the authorities in Spain? How many visits to Spain were made regarding the fingerprints in question? When was Mr. Mayfield officially identified? At what point did the FBI become aware of the doubts of the Spaniards as to Mr. Mayfield being the owner of the prints in question? When did the FBI discover the misidentification? What actions were taken immediately following the misidentification?

2. LD.

a. Please describe the standard protocols and methodologies that FBI fingerprint examiners use to determine whether a particular latent fingerprint is of value for

To: Counterterrorism From: Office of Congressional Affairs
Re: 62F-HQ-1077726, 06/09/2004

a. In how many such cases has the authorities to delay notification been used?

b. In how many such cases has the authority added by Section 213(b)(1), which allows a delay where "the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result" been used? Please describe the circumstances in each of these cases.

c. In how many such cases has the authority set forth in 18 U.S.C. 2705(E), which provides for delay in cases which would "otherwise seriously jeopardize an investigation or unduly delay a trial" been used? Please describe the circumstances in each of these cases?

83. Sections 201 and 202 of the USA-Patriot Act added a number of offenses to the "predicate offense list" applicable to criminal wiretaps pursuant to Chapter 119 of Title 18. The following question pertains to the time period since the passage of the USA-Patriot Act, October 26, 2001.

a. OGC. In how many cases has have the newly-added predicate offenses been used to support an application for a criminal wiretap under the authority of Chapter 119 of Title 18?

b. OGC. In how many such cases has the newly-added predicate offense been the only predicate offense asserted as the basis for the warrant, i.e., where a warrant could not have been lawfully issued but for the passage of the additional criminal predicates?

c. Inspection Division. Has the Department of Justice or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Sections 201 or 202 of the USA-Patriot Act? If so, please describe the nature and disposition of any such complaint.

d. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute, including the addition of predicate crimes, which the Congress should consider?

84. Sections 203(b) and 203(d) of the USA-Patriot Act provide specific authority for the provision of intelligence information acquired in the course of a criminal investigation to elements of the Intelligence Community. Section 901 of the same act makes such disclosure in most cases mandatory. The following questions pertain to the implementation of these sections.

To: Counterterrorism From: Office of Congressional Affairs
Re: 62F-HQ-1077726, 06/09/2004

a. OGC. Section 203(c) of the USA-Patriot Act requires the Attorney General to "establish procedures for the disclosure for the disclosure of information" as provided for in Section 203. Have such procedures been promulgated? If so, please provide a copy of those procedures to the Committee.

b. OGC. Section 203(b) specifically provides authority "to share electronic, wire, and oral interception information" where such information is foreign intelligence information. What is the method for disseminating such information to the Intelligence Community?

(i) In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of Section 203 (b) material?

(1) If so, how many such reports have been issued?

(2) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

c. OGC. Section 203(d), the so-called "catch-all" provision, provides a general authority to share foreign intelligence information with the Intelligence Community. What is the method for disseminating such information to the Intelligence Community?

(i) In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of Section 203(d) material?

(1) If so, how many such reports have been issued?

(2) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

d. OGC. Section 905(c) of the USA-Patriot Act requires the Attorney General to "develop procedures for the administration of this section. . . ." Have such procedures been promulgated? If so, please provide a copy of those procedures to the Committee.

To: Counterterrorism From: Office of Congressional Affairs
Re: 62F-HQ-1077726, 06/09/2004

e. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 203 of the USA-Patriot Act? If so, please describe the nature and disposition of any such complaint.

f. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

85. Sections 206 of the USA-Patriot Act, the so-called "roving wiretap" provision, permits the issuance of a FISA warrant in cases where the subject will use multiple communication facilities. This question pertains the implementation of this section during the time period since the passage of the USA-Patriot Act, October 26, 2001.

a. OGC. How often has this authority been used, and with what success?

b. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

c. OGC. Some have read this section as providing for surveillance in cases where neither the identify of the subject or the facility to be used is known -- in effect, allowing for the authorization of FISA surveillance against all phones in a particular geographic area to try to intercept conversation of an unknown person. Is this the reading of the statute being adopted by the Federal Bureau of Investigation and the Department of Justice? If not, please provide your interpretation of this authority.

(i) Have any briefs been filed with the Foreign Intelligence Surveillance Court on this subject? If so, please provide copies of such briefs to the Committee.

To: Counterterrorism From: Office of Congressional Affairs
Re: 62F-HQ-1077726, 06/09/2004

d. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 206 of the USA-Patriot Act? If so, please describe the nature and disposition of such a complaint.

e. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

86. Section 207 of the USA-Patriot Act extends the time limits provided in the FISA which govern surveillance against agents of a foreign power.

a. OGC. Has the Federal Bureau of Investigation or the Department of Justice conducted any review to determine whether, and if so, how many, personnel resources have been saved by this provision? If so, please provide the results to the Committee.

b. OGC. Have there been any cases where, after the passage of the now-extended deadlines it was determined, either by the Department of Justice, the Federal Bureau of Investigation or the Foreign Intelligence Surveillance Court, that surveillance should have been terminated at an earlier point because of the absence of a legally required predicate?

c. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 207 of the USA-Patriot Act? If so, please describe the nature and disposition of any such complaint.

d. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

87. Section 209 of the USA-Patriot Act clarified the law with regarding the applicability of criminal search warrants to voice mail. This question pertains to application of this provision since its passage.

a. OGC. How many such search warrants have been issued since passage of this act?

b. OGC. In such cases, have there been any instances in which a wiretap, as opposed to a search, warrant would not

To: Counterterrorism From: Office of Congressional Affairs
Re: 62F-HQ-1077726, 06/09/2004

have been supported by the facts asserted in support of the search warrant.

c. Inspection Division. Has the Department of Justice or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 209 of the USA-Patriot Act? If so, please describe the nature and disposition of any such complaint.

d. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

88. Section 212 of the USA-Patriot Act permits communications service providers to provide customer records or the content of customer communications to the FBI in an emergency situation. This question pertains to application of this provision since its passage, and to all instances, not only to terrorism investigations.

a. OGC. In how many cases has this provision been used? Please provide a short description of each such case to the Committee.

b. OGC. In any such case have there been any cases in which, except for the time constraints imposed by the emergency situation, a conventional wiretap or search warrant, would not have been supported by the facts available to the Government at the time of the emergency request? If so, please describe such situations.

c. Inspection Division. Has the Department of Justice or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 212 of the USA-Patriot Act? If so, please describe the nature and disposition of any such complaint.

d. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

89. Section 214 of the USA-Patriot Act permits the use of FISA pen register/trap & trace orders with respect to electronic communications, and eliminates the requirement that such use be only in the context of a terrorist or espionage investigation. This question pertains to application of this provision since its passage, and to all instances, not only terrorism investigations.

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a. OGC. In how many cases has this authority been used?

(i) How many of such cases were terrorism-related?

b. OGC. Of the cases in which such authority was used, in how many was a subsequent application for a full surveillance order made pursuant to the FISA, or Chapter 19 of Title 18?

c. Inspection Division. Has the Intelligence Community, Department of Justice, or Federal Bureau of Investigation developed regulations or directives defining the meaning of non-content communications? If such regulations or directives have been issued, please provide copies to the Committee.

d. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

90. Section 215 of the USA-Patriot act authorizes the Foreign Intelligence Surveillance Court to issue orders permitting FBI to access "tangible" items in the course of a terrorism or espionage investigation. The following questions pertain to the application of this provision since its inception.

a. OGC. How many times has this authority been used, and with what success?

b. OGC. Has this provision been used to require the provision of information from a library or bookstore? If so, please describe how many times, and in what circumstances.

c. OGC. In your testimony you compared this provision with existing authority in the criminal context, noting that records such as library records are subject to a grand jury subpoena. However, in criminal cases the propriety and

To: Counterterrorism From: Office of Congressional Affairs
Re: 62F-HQ-1077726, 06/09/2004

lawfulness of subpoenae are to some extent tested in the adversary process of a trial - how, in the context of the FISA, does such a check occur?

d. OGC. As of October 2004 the Department of Justice advised that this provision had not been used. If that is true, is there a necessity to maintain this provision in law? Why?

(i) With respect to the potential applicability of this section to libraries and bookstores, there has been some concern that the mere prospect of use of the statute has a "chilling effect" on the use of these facilities. Can this chilling effect be minimized, if not eliminated, by incorporating a higher threshold for use in the limited context of libraries and bookstores? If not, why not?

e. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

f. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 215 of the USA-Patriot Act? If so, please describe the nature and disposition of any such complaint.

g. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

91. Section 217 of the USA-Patriot Act authorizes, without court order, the interception of communications to and from a trespasser with a protected computer. This question pertains to the implementation of this provision since its passage.

a. OGC. How many times has the authority under this section been used, and with what success? Please provide descriptions of the circumstances where it has been used.

To: Counterterrorism From: Office of Congressional Affairs
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b. OGC. Section 217(2)(I) requires authorization by the owner of the computer before the section can be applied. Can this authorization be withdrawn or limited by the owner of the computer? If so, how and in what circumstances?

c. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 217 of the USA-Patriot Act? If so, please describe the nature and disposition of each such complaint.

92. Section 218 of the USA-Patriot Act created the so-called "significant purpose" test for applications pursuant the FISA, clarifying the law to recognize that in many cases such surveillance may implicate both a law enforcement and an intelligence interest. This question pertains to the implementation of this provision since its passage.

a. OGC. Please provide the Committee with specific examples, in unclassified form if possible, of cases in which both law enforcement and intelligence interests were "significant."

b. Inspection Division. Has the Department of Justice, the Director of Central Intelligence (in his capacity as head of the Intelligence Community) or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 218 of the USA-Patriot Act? If so, please describe the nature and disposition of each such complaint.

c. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

93. Section 220 of the USA-Patriot Act, "Nationwide Service of Search Warrants for Electronic Evidence" allows for the execution of a search warrant seeking electronic data anywhere in the country. This question pertains to the implementation of this provision since its passage.

a. OGC. In how many cases has this authority been used?

b. Inspection Division. Has the Department of Justice or the Federal Bureau of Investigation received any complaints regarding the application or implementation of Section 220 of the

To: Counterterrorism From: Office of Congressional Affairs
Re: 62F-HQ-1077726, 06/09/2004

USA-Patriot Act? If so, please describe the nature and disposition of each such complaint.

c. OGC. Based upon the application of this provision of law during the period since its passage, are there changes to this statute which the Congress should consider?

94. OGC. Section 223 of the USA-Patriot Act creates a cause of action for willful violations of Title III's electronic surveillance procedures. Have any such lawsuits been brought? If so, please provide details of each such case.

95. OGC. Section 225 of the USA-Patriot Act provides immunity for those who aid in the execution of a FISA order. Has such immunity been invoked? If so, please describe any such case.

96. The following question pertains to surveillance conducted pursuant to the FISA.

a. CTD. What is the backlog on processing of intercepts? What is the average time between interception and first monitoring.

b. OIO. What percentage of intercepts that are not in English are translated within 24 hours? A week?

c. OIO. How many hours of FISA intercepts remain untranslated as of May 20, 2004?

d. CTD. Please describe the process of indexing and retrieving FISA material.

e. OIO. In the past 5 years, has there been a review or audit of the accuracy of FBI translations of intercepted or seized foreign language material?

Questions Posed by Senator Feingold

FBI Role in Iraq

97. OIO.

a. How many special agents, translators, and other FBI employees have been assigned to work in Iraq since March 2003 and how many are currently there ?

b. Where were these agents, translators, and other employees assigned before they were sent to Iraq?

To: Counterterrorism From: Office of Congressional Affairs
Re: 62F-HQ-1077726, 06/09/2004

asking him to clarify whether section 215 has been used since September 18, 2003. (Copy of letter attached.)

a. Please indicate whether section 215 has been used since September 18, 2003.

b. If section 215 has been used, please describe how it has been used. How many U.S. persons and non-U.S. persons were targets of the investigation? Was the section 215 order served on a library, newsroom, or other First Amendment sensitive place? Was the product of the search used in a criminal prosecution?

104. CTD. The Security and Freedom Ensured (SAFE) Act (S. 1709) would amend the roving wiretaps provision of the PATRIOT Act (section 206) by placing reasonable safeguards to protect the conversations of innocent Americans.

a. The SAFE Act would require the FBI to determine whether the target of the wiretap is present at the place being tapped. Since the FBI must already comply with this requirement when conducting roving wiretaps in criminal investigations (see 18 U.S.C. § 2518(11), (12)), why shouldn't Congress require the FBI to comply with this important requirement when conducting roving wiretaps in foreign intelligence investigations? Please explain.

b. The SAFE Act would also require the FBI to identify either the target of the wiretap or the place to be wiretapped. For example, in the event that the FBI has a physical description of the target but does not know the identity of the target, the SAFE Act would allow the FBI to conduct a "John Doe" wiretap by identifying the facilities to be wiretapped. This is a sensible requirement to protect innocent Americans who are not the target of an investigation, while still allowing the FBI to conduct surveillance of suspected terrorists or spies. Why shouldn't Congress enact this prudent safeguard? Please explain.

Questions Posed by Senator Durbin

105. Finance Division. You testified that terrorism prevention is the top priority of the Bureau and that resources have been diverted within the Bureau in support of this important effort. However, the fight against terrorism should not come at the cost of diminished law enforcement in critical areas such as criminal civil rights violations. Please discuss what resources if any have been diverted away from the FBI's Civil Rights Program since September 11, 2001.

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI)
Sent: Thursday, July 15, 2004 8:33 AM
To: [REDACTED] (OGC) (FBI)
Subject: Answer to SSCI Question 34

b6
b7c

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DATE 08-22-2005 BY 65179 DMH/CLS
CA# 05-CV-0845

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NON-RECORD

"Prior to the Patriot Act, the FISA statute was interpreted to require that there existed a "primary purpose" of gathering intelligence in order to secure a FISA Court order. Because of this interpretation of the FISA statute, the Department of Justice and the FISA Court required that certain procedures be followed in order to share intelligence with criminal investigators and prosecutors. These procedures were often burdensome, but prior to the Patriot Act information was shared from intelligence investigations to criminal investigations. This sharing was often difficult and burdensome, but intelligence information was shared with criminal investigations."

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CERTIFICATE OF SERVICE OF ATTACHED ORDER

Date and Time of Service _____

Place of Service _____

Served upon _____

Served by _____

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DATE 12-14-2005 BY 65179 DMH/BAW/PVR

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Certificate of Service of Attached Order is true and correct.

Executed on _____
Date

By: _____
Signature of Server

Inquiries Regarding Production May Be Directed to:

Name of Special Agent
Federal Bureau of Investigation
_____ Field Office
Telephone Number

Message

DATE: 12-08-2005
CLASSIFIED BY 65179 DHM/BAW/PVR
REASON: 1.4 (C)
DECLASSIFY ON: 12-08-2030

Page 1 of 2

CA# 05-CV-0845

[REDACTED] (OGC) (FBI)

~~SECRET~~

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WHERE SHOWN OTHERWISE

From: [REDACTED] (OGC) (FBI)

b6

Sent: Monday, July 19, 2004 11:47 AM

b7C

To: [REDACTED] (OGC) (FBI)

Subject: FBI repsonses to congressional inquiries.

b1

~~SECRET~~
RECOR

b6

b7C

[REDACTED] (S)
[REDACTED] the anwer to question 103 is out of date. I had sent you the enclosed email to reflect that the answer needed to be changed, based on the fact that in fact the business record order was served and [REDACTED] was produced.

-----Original Message-----

From: [REDACTED] (OGC) (FBI)

Sent: Tuesday, July 06, 2004 3:05 PM

To: [REDACTED] (OGC) (FBI)

b1

Subject: RE: FISC ORDER

b6

b7C

~~SECRET~~
RECOR

[REDACTED] (S)
[REDACTED] per my earlier email that had responses to questions 60,90, and 103, I need to amend the answer to 103 (b) since I just got updated information as to the service of the first business record order. The response should read:

b

(S)

b1 , b2, b2, b5, b6, b7C, b7E

-----Original Message-----

From: [REDACTED] (AL) (FBI)

Sent: Tuesday, July 06, 2004 2:35 PM

To: [REDACTED] (OGC) (FBI)

Cc: [REDACTED] (WF) (FBI)

Subject: FISC ORDER

b1 ,b2, b5, b6, b7C, b7E

~~SECRET~~
RECOR

(S)

(S)

~~SECRET~~

7/19/2004

~~SECRET~~

b2

b6

b7C



~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~SECRET~~

215 Delegation

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DATE 08-23-2005 BY 65179 DMH/CLS
CA# 05-CV-0845

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI)

b6

Sent: Wednesday, May 04, 2005 7:55 AM

b7C

To: [REDACTED] (OCA) (FBI); THOMAS, JULIE F. (OGC) (FBI)

Cc: [REDACTED] (OGC) (FBI)

Subject: RE: Request for Classification Guidance

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DATE 08-23-2005 BY 65179 DMH/CLS

CA# 05-CV-0845

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NON-RECORD

b6

b7C

[REDACTED]

I read the last bullet in the attached wpd and do not see that it raises any classification issues. The bullet does not provide any information that [REDACTED] as concerned about. I defer to WFO regarding any operational concerns vis-a-vis their pending case. [REDACTED]

-----Original Message-----

From: [REDACTED] (OCA) (FBI)

Sent: Tuesday, May 03, 2005 3:16 PM

b6

To: [REDACTED] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI)

b7C

Cc: [REDACTED] (OGC) (FBI)

Subject: Request for Classification Guidance

UNCLASSIFIED
NON-RECORD

Willie Hulon is testifying on Thurs (5/5) before the House Judiciary Crime Subcommittee re Patriot Act §212 (emergency disclosures by ISPs). In prepping him for this hearing, we obtained reports from TLU relating to use of §212. The attached wpd are bullets summarizing the reports that were prepared for Mr. Hulon.

Between Jan and March 2003 there was a spike in the use of §212 that is attributed to a particular investigative effort that is described in the WFO e-mail that is also attached. [REDACTED]

[REDACTED] Mr. Hulon [REDACTED]

b5

Thanks,

[REDACTED]
Office of Congressional Affairs

[REDACTED]

b2

b6

UNCLASSIFIED

b7C

UNCLASSIFIED

6/14/2005

[redacted] (OGC) (FBI)

From: [redacted] (OGC) (FBI) b6
Sent: Friday, April 01, 2005 10:45 AM b7c
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OCA) (FBI)
Subject: FW: ISO Details

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CA# 05-CV-0845

[redacted] Any ideas?

b6

-----Original Message-----

b7c

From: [redacted] (OCA) (FBI)
Sent: Friday, April 01, 2005 10:35 AM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (CTD) (FBI);
[redacted] (CTD) (FBI); [redacted] (AL) (FBI)
Subject: ISO Details

b6

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NON-RECORD

b7c

Last year, FBI OGC (specifically [redacted] of ILU) began drafting a report concerning use of Patriot Act provisions. [redacted] is out of the office on AL this week. The narrative case example was in the earliest versions of the report as an example of information sharing (§203), however, in [redacted] I have not been able to locate any back-up documents that would provide additional details (i.e. subject name) re this case. I'm casting a wide net in the hopes that this narrative rings a bell with someone who could point me in the direction of additional details. Any guidance addressees can provide would be appreciated. Thanks,

[redacted] I've included you because this draft report has been around for a while and may have come through the ExecStaff while you were there.)

b6

b7c

In the aftermath of the September 11th attacks, a reliable intelligence asset identified a naturalized U.S. citizen from a middle-eastern country as a leader among a group of Islamic extremists residing in the U.S. The subject's extremist views, affiliations with other terrorism subjects, and his heavy involvement in the stock market increased the potential that he was a possible financier and material supporter of terrorist activities. Early in the criminal investigation it was confirmed that the subject had developed a complex scheme to defraud multiple brokerage firms of large amounts of money. The subject was arrested and pled guilty to wire fraud. [redacted]
[redacted]

b5

[redacted]
Office of Congressional Affairs
[redacted]

b2

b6

b7c

UNCLASSIFIED

6/14/2005

UNCLASSIFIED

6/14/2005

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI)

b6

b7C

Sent: Tuesday, November 16, 2004 7:12 AM

To: [REDACTED] (ITD) (FBI); [REDACTED] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI); KELLEY, PATRICK W. (OGC) (FBI)

Subject: RE: 207208 letter

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DATE 08-23-2005 BY 65179 DMH/CLS
CA# 05-CV-0845

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NON-RECORD

Agree.

-----Original Message-----

b6

b7C

From: [REDACTED] (ITD) (FBI)

Sent: Monday, November 15, 2004 8:05 PM

To: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI); KELLEY, PATRICK W. (OGC) (FBI)

Cc: [REDACTED] (ITD) (FBI)

Subject: RE: 207208 letter

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Unless I hear back otherwise, given everyone's comments, I will reply back to the USAO that FBI OGC is reviewing the matter and that they should inform the local FBI agents that they should not send out the letter without first conferring with FBI OGC NSLB.

PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT
PRIOR OGC APPROVAL

[REDACTED]
Associate General Counsel - Unit Chief
Science & Technology Law Unit
Engineering Research Facility

b2

b6

b7C

-----Original Message-----

b6

b7C

From: [REDACTED] (OGC) (FBI)

Sent: Monday, November 15, 2004 11:43 AM

To: [REDACTED] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI); [REDACTED] (ITD) (FBI)

Subject: RE: 207208 letter

UNCLASSIFIED
NON-RECORD

Since the pony [REDACTED] sent refers to ITOS II, let me see what I can find out from my end.

b6

b7C

6/14/2005

~~SECRET~~DATE: 12-08-2005
CLASSIFIED BY 65179 DMH/BAW/PVR
REASON: 1.4 (C)
DECLASSIFY ON: 12-08-2030

[REDACTED] (OGC) (FBI)

CA# 05-CV-0845

From: [REDACTED] (OGC) (FBI)
Sent: Wednesday, August 25, 2004 10:44 AM
To: [REDACTED] (OCA) (FBI)
Cc: [REDACTED] (OCA) (FBI) [REDACTED] (OGC) (FBI)
Subject: RE: Classified Input re Patriot Act cases

b6

b7C

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[REDACTED] On tracking Patriot Act sunset provisions, ILU made that suggestion early on--and I don't know where it went--but it was not done. We have since scrubbed the field--via CDCs for input and I know that NSLB has done the same with CTD but, We can't make anybody do anything--all we can do is ask and thankfully, most CDCs are conscientious enough to help out but all they can at the FO level is ask as well. [Also, I know that EOUSA surveyed US Attorney's offices but, again, a response was not mandatory by them either and the responses reflect that]. In my opinion, the only way to ensure responsiveness, completeness, accuracy, and timeliness is for our front office to mandate reporting of incidents.

b6

b7C

-----Original Message-----

From: [REDACTED] (OCA) (FBI)
Sent: Tuesday, August 24, 2004 6:56 PM
To: [REDACTED] (OGC) (FBI)
Cc: [REDACTED] (OCA) (FBI) [REDACTED] (OGC) (FBI)
Subject: RE: Classified Input re Patriot Act cases

b6

b7C

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NON-RECORD

[REDACTED] generally I think the meeting went o.k. [REDACTED]

b6

b7C

Patriot Act will continue to be scrutinized - even beyond the sunset. If you or [REDACTED] have any thoughts on how we can accomplish this, I'd appreciate it.

Also [REDACTED] on the Senate Ethics Committee request - DOJ advised this afternoon that [REDACTED]

[REDACTED] - I'll keep
you posted. Thanks,

b2

b5

b6

b7C

Office of Congressional Affairs

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Tuesday, August 24, 2004 4:29 PM
To: [REDACTED] (OCA) (FBI)

b2

b6

b7C

6/14/2005

~~SECRET~~

~~SECRET~~

Cc: [redacted] (OCA) (FBI) [redacted] (OGC) (FBI)
Subject: RE: Classified Input re Patriot Act cases

b6
b7C

UNCLASSIFIED
NON-RECORD

[redacted] how did this meeting turn out?

b6
b7C

-----Original Message-----

From: [redacted] (OCA) (FBI)
Sent: Monday, August 23, 2004 6:23 PM
To: [redacted] (OGC) (FBI) [redacted] (OGC) (FBI)
Cc: [redacted] (OCA) (FBI)
Subject: RE: Classified Input re Patriot Act cases

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NON-RECORD

[redacted] and I spoke. We're happy to staff this meeting and report back - I think that OLP is going to suggest that we go back to the drawing board and [redacted] and I are happy to defend our methodology in collecting the info and advocate for getting something to CMS, even if DOJ thinks we can get better examples if we ask differently. You're welcome to send someone if you want to - or we'll report back. Thanks,

b6
b7C

[redacted]
Office of Congressional Affairs
[redacted]

b2
b6
b7C

-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Monday, August 23, 2004 1:05 PM
To: [redacted] (OGC) (FBI) [redacted] (OCA) (FBI)
Cc: [redacted] (OCA) (FBI)
Subject: RE: Classified Input re Patriot Act cases

b6
b7C

UNCLASSIFIED
NON-RECORD

[redacted] I have an 11:00 am meeting and [redacted] who helped on this is out of the office until Wednesday. Spike is out as well until Wednesday. I'll see if I can get someone else to go. [redacted]

b6
b7C

-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Monday, August 23, 2004 12:26 PM
To: [redacted] (OCA) (FBI)
Cc: [redacted] (OCA) (FBI) [redacted] (OGC) (FBI)
Subject: RE: Classified Input re Patriot Act cases

b6
b7C

UNCLASSIFIED
NON-RECORD

[redacted] Not sure I could contribute much to a discussion of the classified portion

6/14/2005

~~SECRET~~

of the sunset provisions. Although we put the whole thing together, the classified parts are CTD/NSLB input. But, I can go if you want.

-----Original Message-----

From: [redacted] (OCA) (FBI) b6
Sent: Monday, August 23, 2004 12:22 PM b7C
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted] (OCA) (FBI)
Subject: FW: Classified Input re Patriot Act cases

UNCLASSIFIED
NON-RECORD

DOJ has scheduled a meeting tomorrow at 10:30 am in the OIPR conference room (6150 main) to discuss our classified report re Patriot Act sunset provisions. [redacted]

b2

[redacted] while I'm not sure that deadline is firm, I believe we have a considerable interest in getting DOJ to sign off on our draft. I am planning to attend, as is [redacted]. Please advise if you can attend or send a designee. Thanks,

b5

b6

b7C

[redacted]
Office of Congressional Affairs

b6

b7C

-----Original Message-----

From: [redacted] (OGC) (OGA)
Sent: Monday, August 23, 2004 11:58 AM
To: [redacted] (OCA) (FBI)
Subject: RE: Classified Input re Patriot Act cases

UNCLASSIFIED
NON-RECORD

OK, looks like 10:30 works for us over here. As of right now, it will be OLA (Sean McLaughlin and Dave Blake), OLP (Rachel Brand), OIPR [redacted] and possibly representatives from ODAG, CRM and/or EOUSA. We will meet in the OIPR conference room (6150 main).

b6

b7C

-----Original Message-----

From: [redacted] (OCA) (FBI) b6
Sent: Monday, August 23, 2004 11:19 AM b7C
To: [redacted] (OGC) (OGA)
Subject: RE: Classified Input re Patriot Act cases

UNCLASSIFIED
NON-RECORD

10:30 tomorrow is great for me! Thanks,

b6

b7C

6/14/2005

~~SECRET~~

Office of Congressional Affairs
[redacted]

b2

-----Original Message-----

b6

From: [redacted] (OGC) (OGA)

b7C

Sent: Monday, August 23, 2004 11:14 AM**To:** [redacted] (OCA) (FBI)**Subject:** RE: Classified Input re Patriot Act cases**UNCLASSIFIED****NON-RECORD**

Is tomorrow at 10:30am a good time for your to meet on this? I'll probably invite OLA/OLP/OIPR and possibly ODAG.

-----Original Message-----

From: [redacted] (OCA) (FBI)

b6

Sent: Monday, August 23, 2004 10:44 AM

b7C

To: [redacted] (OGC) (OGA)**Cc:** [redacted] (OGC) (FBI); [redacted]

[redacted] (OCA) (FBI)

Subject: Classified Input re Patriot Act cases**Importance:** High**UNCLASSIFIED****NON-RECORD**

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b7C

[redacted] I got a call this morning from [redacted]

[redacted] (General Counsel's office) asking (S)

about the status of the FBI's input into the classified IC report on Patriot Act cases. When I spoke with

[redacted] about this last week (I think you know

[redacted] started a detail at Senate Judiciary last week), he said it was at DOJ?

Is that correct and do you have any info re when the review will be complete?

(S) [redacted] offered this morning that [redacted] is anxious to get this out and may finalize the response without FBI/DOJ input. (S)

[redacted]

b2

Office of Congressional Affairs

b6

[redacted]

b7C

UNCLASSIFIED**UNCLASSIFIED**

6/14/2005

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UNCLASSIFIED

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~~SECRET~~

[redacted] (OGC) (FBI)

From: [redacted] (OGC) (FBI)

b6

Sent: Sunday, August 08, 2004 9:40 AM

b7C

To: [redacted] (OGC) (FBI)

CA# 05-CV-0845

Subject: RE: CTD responses

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

b6

b7C

[redacted] Section 203 of the Patriot Act has nothing to do with FISA. It permits the sharing of Title III information - I explained this to [redacted] last week. I am at a loss on how to get this point across to them. Could you please sit down in person with [redacted] and/or his unit chiefs and iron this out? [redacted]

-----Original Message-----

From: [redacted] (OGC) (FBI)

Sent: Friday, August 06, 2004 4:50 PM

b6

To: [redacted] (OGC) (FBI)

b7C

Subject: FW: CTD responses

Importance: High

DATE: 12-10-2005

CLASSIFIED BY 65179 DMH/BAW/PVR

REASON: 1.4 (C)

DECLASSIFY ON: 12-10-2030

05-CV-0845

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Please see answers below.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE[redacted]
Assistant General Counsel
National Security Law Branch

Ext [redacted]

-----Original Message-----

b6

From: [redacted] (CTD) (FBI)

b7C

Sent: Friday, August 06, 2004 4:16 PM

To: [redacted] (OGC) (FBI)

Subject: RE: CTD responses

Importance: High

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[redacted] below are responses to Questions 84 (b), 84 (c) and 90 (e). I apologize for the delay. When last we spoke, I was left with the impression that you were going to reach out to [redacted] the following week. In any event, my Unit Chiefs tried to track down information to respond to the questions. Hopefully, you'll be able to make use of the information. Please feel free to modify/reformat as you see fit. Thanks, and have a good weekend.

b6

b7C

[redacted]
Terrorism Reports and Requirements Section
Counterterrorism Division, FBIHQ, Room 4712
[redacted]

b2

b6

b7C

6/14/2005

~~SECRET~~

84. Sections 203(b) and 203(d) of the USA-Patriot Act provide specific authority for the provision of intelligence information acquired in the course of a criminal investigation to elements of the Intelligence Community. Section 901 of the same act makes such disclosure in most cases mandatory. The following questions pertain to the implementation of these sections.

- b. Section 203(b) specifically provides authority "to share electronic, wire, and oral interception information" where such information is foreign intelligence information. What is the method for disseminating such information to the Intelligence Community?

In regard to the dissemination of Foreign Intelligence Surveillance Act (FISA)-derived electronic, wire and oral intercept information, the FBI's Counterterrorism Division employs a general evaluation and oversight process which includes input from Operational Program Managers, Intelligence Analysts, the National Security Law Branch, and, when necessary, the Department of Justice. The intelligence information's value is assessed for dissemination to not only the Intelligence Community (IC), but also federal, state and local law enforcement entities (dependent upon proposed use, context and nature of any threat-related information), and, when authorized by DOJ, to foreign intelligence services and foreign law enforcement agencies (dependent upon proposed use, context and nature of any threat-related information).

For general FBI intelligence dissemination, minimized FISA-derived intelligence is analyzed and sanitized to protect intelligence sources and methods and, if applicable, United States persons and entities, that may possibly be compromised or negatively impacted if left unprotected. FBI Program Managers and Intelligence Analysts concurrently identify FISA-derived intelligence that is consistent with IC intelligence requirements and interests. This information is subsequently disseminated via an Intelligence Information Report (IIR), an electronic communication format that is widely accepted among the IC as the standard intelligence dissemination vehicle. IIRs consist of raw intelligence, (intelligence which is not finally evaluated), as well as some degree of associated clarifying information which puts the raw intelligence into context. IIRs are drafted and prepared by the FBI's cadre of Intelligence Analysts/Reports Officers.

- (i) In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of Section 203 (b) material?

~~SECRET~~

Yes, the FBI disseminates raw intelligence via the IIR.

(1) If so, how many such reports have been issued?

During the period August, 2002 (the beginning time-frame in which statistical data was collected), through August, 2004, the Counterterrorism Division has disseminated 242 IIRs containing FISA-derived intelligence.

(2) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

There are various means by which IIRs are evaluated. Members of the IC often provide feedback assessing the quality and value of specific IIRs directly to the FBI Intelligence Analysts/Reports Officers who author the reports. On each IIR, the Reports Officers identify a means for the customers to contact them directly. IC members will assess the quality/relevancy of the reporting, as well as submit additional collection requirements. Often, IC members forward formal Requests for Information (RFIs) requesting additional information which was protected (not provided) in the IIR (an example would be U.S. Person information). RFIs can provide an excellent indication of intelligence community interest in FBI reporting. The FBI's Office of Intelligence also receives evaluations or assessments of FBI reporting. The Office of Intelligence is working to establish a formal IIR evaluation mechanism by which recipients can rate or provide feedback on FBI intelligence reporting.

84. Sections 203(b) and 203(d) of the USA-Patriot Act provide specific authority for the provision of intelligence information acquired in the course of a criminal investigation to elements of the Intelligence Community. Section 901 of the same act makes such disclosure in most cases mandatory. The following questions pertain to the implementation of these sections.

c. Section 203(d), the so-called "catch-all" provision, provides a general authority to share foreign intelligence information with the Intelligence Community. What is the method for disseminating such information to the Intelligence Community?

The Counterterrorism Division shares foreign intelligence information, as defined in Section 203(d)(2), with the Intelligence Community (IC) through several dissemination

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conduits. Dissemination can be through direct classified and unclassified Intelligence Information Reports (IIRs), Intelligence Assessments, Intelligence Bulletins, Teletype Memoranda (TM), or through Intelligence Community websites on a classified network. The FBI also shares intelligence information through membership interaction by IC representatives participating on FBI Joint Terrorism Task Forces (JTTFs) which are operating in 84 locations across the United States. Unclassified, but law enforcement sensitive, intelligence information, also is disseminated to Federal, state, and local law enforcement intelligence components through Law Enforcement Online (LEO), a computer network which provides finished intelligence products, assessments, and bulletins on significant developments or trends.

(i) In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of Section 203 (b) material?

Dissemination of Electronic, Wire, and Oral Interception Information to the IC derived through standard criminal procedures may be effected electronically through IIRs, TM, Intelligence Assessments, Intelligence Bulletins. However, dissemination of this intelligence information also may be transacted through the exchange of FBI Letterhead Memoranda (LHMs) among relevant IC members.

(1) If so, how many such reports have been issued?

The FBI has no central database readily to determine the quantity of 203(b)material disseminations through the aforementioned methods.

(2) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

There are various means by which IIRs are evaluated. Members of the USIC often provide feedback assessing the quality and value of specific IIRs directly to the FBI Intelligence Analysts/Reports Officers who author the reports. On each IIR, the Reports Officers identify a means for the customers to contact them directly. IC members will assess the quality/relevancy of the reporting, as well as submit additional collection requirements. Often, IC members forward formal Requests for Information (RFIs) requesting additional information which was protected (not provided) in the IIR (an example would

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be U.S. Person information). RFIs can provide an excellent indication of IC interest in FBI reporting. The FBI's Office of Intelligence also receives evaluations or assessments of FBI reporting. The Office of Intelligence is working to establish a formal IIR evaluation mechanism by which recipients can rate or provide feedback on FBI intelligence reporting.

90. Section 215 of the USA-Patriot act authorizes the Foreign Intelligence Surveillance Court to issue orders permitting FBI to access "tangible" items in the course of a terrorism or espionage investigation. The following questions pertain to the application of this provision since its inception.

e. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

The Intelligence Information Report (IIR) is the mechanism by which the FBI disseminates raw intelligence information to the Intelligence, Policy, Defense and Law Enforcement Communities. The intelligence information contained in these IIRs is information generally derived from FBI operations, investigations or sources. Intelligence information acquired pursuant to Section 215 of the USA-Patriot Act could, if deemed appropriate, be disseminated via an IIR. Between August 2002 and August 2004, the FBI has disseminated approximately 3860 terrorism-related IIRs to the Intelligence Community.

(i) If so, how many such reports have been issued?

None of the information contained in the 3860 terrorism-related IIRs disseminated between August 2002 and August 2004 was acquired pursuant to section 215 of the USA-Patriot Act.

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

Although the FBI has procedures to evaluate the quality of intelligence reports, no reports have been disseminated which contained information obtained via application of section 215.

-----Original Message-----

From: [REDACTED] OGC (FBI)
Sent: Friday, August 06, 2004 10:54 AM
To: [REDACTED] (CTD) (FBI)
Cc: [REDACTED] (CTD) (FBI)

b6

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6/14/2005

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Subject: FW: CTD responses

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[REDACTED]

b6

05-CV-0845

b7C

Information regarding question 90. Please let me know if this helps.

Thanks again

[REDACTED]

Assistant General Counsel
National Security Law Branch

b2

b6

b7C

-----Original Message-----

From: [REDACTED] (OGC) (FBI)

b1

Sent: Wednesday, August 04, 2004 3:47 PM

b2

To: [REDACTED] (OGC) (FBI)

b5

Subject: RE: CTD responses

b6

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

b7E

Yes, there has only been [REDACTED] business record order issued, although [REDACTED] more are likely to be filed with the FISC on Friday. As to the intelligence reports, I have no idea what those are, as I've told [REDACTED] (S)

[REDACTED] But they certainly are not a vehicle to transmit information obtained from business record orders - th [REDACTED] and it was given to the field that needed it and they'd have no reason to transmit it to any other place.

[REDACTED]

-----Original Message-----

From: [REDACTED] (OGC) (FBI)

Sent: Wednesday, August 04, 2004 3:41 PM

b6

To: [REDACTED] (OGC) (FBI)

b7C

Subject: FW: CTD responses

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[REDACTED]
[REDACTED]

and I are seeking your knowledge on question # 90 below.

b6

b7C

Please see attached emails.

Thank you.

[REDACTED]

Assistant General Counsel
National Security Law Branch

b2

b6

b7C

-----Original Message-----

From: [REDACTED] (OGC) (FBI)

Sent: Wednesday, August 04, 2004 2:53 PM

To: [REDACTED] (OGC) (FBI)

Subject: RE: CTD responses

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6/14/2005

~~SECRET~~**SENSITIVE BUT UNCLASSIFIED**
NON-RECORD

Clear this with [] to make sure what I said was correct - we have only obtained [] business record order. Thanks. (S)

-----Original Message-----

b6

From: [] OGC (FBI)

b1

b7C

Sent: Wednesday, August 04, 2004 2:50 PM

b2

To: [] OGC (FBI).

b6

Subject: FW: CTD responses

b7C

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

FYI.

Interesting information re. question 90.

-----Original Message-----

From: [] (CTD) (FBI)

b6

Sent: Wednesday, August 04, 2004 2:22 PM

b7C

To: [] OGC (FBI)**Subject:** CTD responses**SENSITIVE BUT UNCLASSIFIED**
NON-RECORD

b6

b7C

[] I met with [] yesterday and she provided me the full text questions to which you needed responses. You may recall that [] information did not reflect the questions accurately or distinguish between the different sections in the Patriot Act. With that being said, I'm coordinating with our Operational Counterparts to try to get appropriate responses. I should have all the responses in by tomorrow morning.

b1

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b6

b7C

b7E

One question which we probably will be unable to answer positively is question 90.

This question has to do with Section 215 of the Patriot Act (Tangible items). During my discussion with [] she recalled on [] instance wherein that particular section was utilized [] I can't seem to

(S)

identify anyone who has knowledge of this incident or, in fact, if there were any other applications (which is unlikely) of Section 215. This may require a canvass to all field CDCs. I'm quite sure that CTD []

[] That's not to say that we didn't [] although I can't even say that), but the question specifically asks about intelligence reports.

b2

Terrorism Reports and Requirements Section
Counterterrorism Division, FBIHQ, Room 4712

b6

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6/14/2005

~~SECRET~~

Question 90 states:

90. Section 215 of the USA-Patriot act authorizes the Foreign Intelligence Surveillance Court to issue orders permitting FBI to access "tangible" items in the course of a terrorism or espionage investigation. The following questions pertain to the application of this provision since its inception

e. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

[REDACTED]
Assistant General Counsel
National Security Law Branch
[REDACTED]

b2

b6

b7C

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6/14/2005

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SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

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~~SECRET~~

[redacted] (OGC) (FBI)

From: [redacted] (OGC) (FBI)
Sent: Wednesday, August 04, 2004 2:53 PM
To: [redacted] (OGC) (FBI)
Subject: RE: CTD responses

b6
b7C

DATE: 12-10-2005
 CLASSIFIED BY 65179 DMH/BAWPVR
 REASON: 1.4 (C)
 DECLASSIFY ON: 12-10-2030
 CA# 05-CV-0845

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Clear this with [redacted] to make sure what I said was correct - we have only obtain [redacted] business record order.
 Thanks.

b1

(S)

b2

-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Wednesday, August 04, 2004 2:50 PM
To: [redacted] (OGC) (FBI)
Subject: FW: CTD responses

b6
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b7E

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 08-24-2005 BY 65179 DMH/CLS

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

FYI.

Interesting information re. question 90.

[redacted]
 Assistant General Counsel
 National Security Law Branch

b2
b6
b7C

-----Original Message-----

From: [redacted] (CTD) (FBI)
Sent: Wednesday, August 04, 2004 2:22 PM
To: [redacted] (OGC) (FBI)
Subject: CTD responses

b6
b7C

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[redacted] I met with [redacted] yesterday and she provided me the full text questions to which you needed responses. You may recall that [redacted] information did not reflect the questions accurately or distinguish between the different sections in the Patriot Act. With that being said, I'm coordinating with our Operational Counterparts to try to get appropriate responses. I should have all the responses in by tomorrow morning.

b1

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b5

b6

b7C

b7E

One question which we probably will be unable to answer positively is question 90. This question has to do with Section 215 of the Patriot Act (Tangible items). During my discussion with [redacted] she recalled only [redacted] instance wherein that particular section was utilized [redacted] I can't seem to identify anyone who has knowledge of this incident or, in fact, if there were any other applications (which is unlikely) of Section 215. This may require a canvass to all field CDCs. I'm quite sure that CTD [redacted]

[redacted] That's not to say that we didn't [redacted] (although I can't even say that), but the question specifically asks about intelligence reports.

[S]

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6/14/2005

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[REDACTED]

Terrorism Reports and Requirements Section
Counterterrorism Division, FBIHQ, Room 4712

[REDACTED]

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SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

~~SECRET~~

DECLASSIFIED BY 65179 DMH/BAW/PVR
ON 12-15-2005

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI) b6
Sent: Tuesday, August 03, 2004 3:41 PM b7C
To: [REDACTED] (CTD) (FBI)
Subject: FW: NSLB Responses - Secret [OGC seeking assistance from CTD]
Importance: High (U)

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

CA# 05-CV-0845

-----Original Message-----

From: [REDACTED] (OGC) (FBI) b6
Sent: Tuesday, August 03, 2004 11:34 AM b7C
To: [REDACTED] (CTD) (FBI)
Cc: [REDACTED] (OGC) (FBI); BOWMAN, MARION E. (OGC) (FBI)
Subject: FW: NSLB Responses - Secret [OGC seeking assistance from CTD]
Importance: High (U)

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[REDACTED] OGC was tasked with answering certain QFRs from the Director's testimony in May. Some require assistance from CTD. Approximately 2 or so weeks ago we contacted [REDACTED] who graciously agreed to help. The task is now assigned to [REDACTED]. We have left several reminders with [REDACTED] but have not received a response. I know he is probably very busy but OCA is pushing us to get the answers finalized. Could you help us? Thanks [REDACTED]

-----Original Message-----

From: [REDACTED] (OGC) (FBI) b6
Sent: Tuesday, August 03, 2004 11:17 AM b7C
To: [REDACTED] (OGC) (FBI)
Subject: FW: NSLB Responses - Secret [OGC seeking assistance from CTD]
Importance: High (U)

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[REDACTED]

Here is the whole string of emails. Hopefully you can make sense of it.

b2

b6

b7C

Assistant General Counsel
National Security Law Branch

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Friday, July 23, 2004 2:43 PM (U)
To: [REDACTED] (CTD) (FBI)
Subject: FW: NSLB Responses - Secret [OGC seeking assistance from CTD]
Importance: High

6/14/2005

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

b6

b7C

[REDACTED]

I just received an Outlook Auto response that [REDACTED] is out of the office today and possibly Monday. OGC is trying to respond to OCA by COB today.

Would you be able to address the following issues (please see emails below).

Any help would be greatly appreciated.

Thank you in advance,

[REDACTED]
Assistant General Counsel
National Security Law Branch

b2

b6

b7C

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Friday, July 23, 2004 2:39 PM
To: [REDACTED] (CTD) (OGA) (U)
Subject: FW: NSLB Responses - ~~Secret~~ [OGC seeking assistance from CTD]
Importance: High

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

b6

b7C

[REDACTED]

Thank you for your previous help with the questions from OCA. As indicated in my previous email, we unfortunately need more specific answers to the three questions that you so generously provided earlier.

I am sure that you are extremely busy, but OCA is looking for a response no later than COB today. Therefore, any help would be greatly appreciated.

In addition, we wanted to make sure that CTD agrees with our answer to Question 89d, where we state in our response to refer to question 85.

89d. OGC. In your testimony you made reference to newly-created procedures by which the Federal Bureau of Investigation disseminates intelligence via "electronic intelligence reports" - is this the mechanism used for dissemination of material acquired pursuant to this section of the FISA?

(i) If so, how many such reports have been issued?

(ii) Has the Federal Bureau of Investigation developed procedures to ascertain the quality and value of such intelligence reports?

Response: Please see answer to Question 85.

6/14/2005

Please let me know if any of this is possible.

Thank you in advance. Please do not hesitate to contact me for any reason.

[REDACTED]

**Assistant General Counsel
National Security Law Branch**

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[REDACTED]

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Wednesday, July 21, 2004 2:41 PM
To: [REDACTED] (CTD) (OGA)
Subject: RE: NSLB Responses - ~~Secret~~(U)

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

b6

b7C

[REDACTED]

Thank you for your responses. Unfortunately, we still have some follow up questions. Question 84 (b) is specific to section 203 (b) which deals with disclosure to grand jury, title 3 etc. Question 84 (d) specifically deals with Section 203 (d) and question 90(e) deals with Section 215 (business records, etc.) of the USA-Patriot Act.

Is it possible to obtain anything more specific?

I appreciate all the help that you have provided with this, and as always any additional information is greatly appreciated.

Please note that I have attached the selected questions to this email.

If you have any questions, please do not hesitate to contact me.

Again, thank you.

[REDACTED]

**Assistant General Counsel
National Security Law Branch**

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[REDACTED]

-----Original Message-----

From: [REDACTED] (CTD) (OGA)
Sent: Tuesday, July 20, 2004 9:19 AM
To: [REDACTED] (OGC) (FBI)
Cc: [REDACTED] (CTD) (FBI); [REDACTED] (CTD) (FBI)
Subject: RE: NSLB Responses - ~~Secret~~(U)

UNCLASSIFIED



b5

-----Original Message-----

From [redacted] OGC) (FBI)
Sent: Monday, July 19, 2004 4:34 PM
To [redacted] (CTD) (OGA)
Subject: FW: NSLB Responses - ~~Secret~~ (U)
Importance: High

b6

b7C

UNCLASSIFIED
NON-RECORD



b6

b7C

I just left you a message regarding this issue.

NSLB is seeking assistance with three questions posed by OPA/OCA. [redacted]
[redacted] said you are the person with the answers.

NSLB supplied the following attached answers to OPA/OCA. We incorporated the answer that you supplied to question 85. There are three other answers that we thought CTD would be able to answer better/more complete than OGC and indicated such in OGC's responses. (Response to questions 84(b), 84(c), and 90 (e)). We believe that portions of the responses can be found in the answer to 85 that you previously supplied.

OCA stated that they would not accept OGC's answers to 84(b), 84(c), and 90 (e)

and that we needed to contact CTD for the answers.

Please let me know if this is possible. Any help is greatly appreciated.

[Redacted]

**Assistant General Counsel
National Security Law Branch**

Ext [Redacted]

b2

b6

b7C

-----Original Message-----

From: [Redacted] (OGC) (FBI)

Sent: Monday, July 19, 2004 2:50 PM

To: [Redacted] (OGC) (FBI)

Subject: NSLB Responses - ~~Secret~~ (U)

UNCLASSIFIED
NON-RECORD

UNCLASSIFIED

UNCLASSIFIED

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SENSITIVE BUT UNCLASSIFIED

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6/14/2005

SENSITIVE BUT UNCLASSIFIED

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-30-2005 BY 65179 DMH/CLS
CA# 05-CV-0845

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI)

Sent: Thursday, July 29, 2004 5:38 PM

b6

To: [REDACTED] (OGC) (FBI) [REDACTED] (OGC) (FBI)

b7C

Cc: [REDACTED] (OI) (FBI) [REDACTED] (OGC) (FBI)

Subject: TIDE (TTIC) Information Sharing

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[REDACTED]

b5

[REDACTED]

[REDACTED]

Office of the General Counsel

[REDACTED]

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b7C

SENSITIVE BUT UNCLASSIFIED

6/14/2005

[redacted] (OGC) (FBI)

From: [redacted] (OGC) (FBI) b6
Sent: Monday, July 26, 2004 10:22 AM b7C
To: [redacted] (OGC) (FBI)
Subject: FW: Sunset provisions

DECLASSIFIED BY 65179 DMH/CLS
ON 08-24-2005
CA# 05-CV-0845

~~SECRET//ORCON,NOFORN~~
~~RECORD 66F-HQ-C1364260~~

Here it is.

-----Original Message-----

From: [redacted] (OGC) (FBI) b6
Sent: Tuesday, July 20, 2004 12:20 PM b7C
To: [redacted] (OCA) (FBI)
Cc: BOWMAN, MARION E. (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI);
[redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI);
[redacted] (OGC) (OGA); [redacted] (OCA) (FBI)
Subject: Sunset provisions

~~SECRET//ORCON,NOFORN~~
~~RECORD 66F-HQ-C1364260~~

[redacted] attached are our comments and the results of our field and HQ survey on the Patriot Act sunset provisions. We folded in the examples provided by NSLB so it is one complete OGC package. [redacted] kept the classification she received for the examples but she deleted most of the references to subject's names, locations, etc--so I am sure that much what is labeled SECRET can be declassified--but I can't do that, which is why I copied Spike. b6 b7C

Not knowing what format you wanted, I just sent it as is. DGC Pat Kelley has approved it as well.

[redacted] b2
Office of the General Counsel b6
[redacted] b7C

~~DERIVED FROM: Multiple Sources~~
~~DECLASSIFY ON: 20140720~~
~~SECRET//ORCON,NOFORN~~

~~DERIVED FROM: Multiple Sources~~
~~DECLASSIFY ON: 20140720~~
~~SECRET//ORCON,NOFORN~~

6/14/2005

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-30-2005 BY 65179 DMH/CLS
CA# 05-CV-0845

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI)

Sent: Friday, July 23, 2004 10:04 AM

To: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI)

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b7c

Cc: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI)

Subject: Patriot Act 203(d) Issue

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

When last we met, I was going to explore teeing up the question of whether Section 203 (d) trumped two statutory restrictions on sharing foreign intel information from criminal investigations with the IC--NICS information on attempted gun purchases and taxpayer return information.

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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Office of the General Counsel

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[REDACTED]

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SENSITIVE BUT UNCLASSIFIED

6/14/2005

(OGC) (FBI)

b6

From: (OGC) (FBI)

b7C

Sent: Wednesday, July 21, 2004 5:40 PM

To: (OGC) (FBI) (OGC) (FBI) (ITD)

Subject: FW: QFRs #104

~~SECRET~~
RECORD 66F-

CA# 05-CV-0845

-----Original Message-----

From: BOWMAN, MARION E. (OGC) (FBI)

Sent: Wednesday, July 21, 2004 2:02 PM

To: (OGC) (FBI)

Subject: FW: QFRs #104

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE~~SECRET~~
RECORD 66F-DATE: 12-29-2005
CLASSIFIED BY 65179dmh/BAW 05-cv-0845
REASON: 1.4 (C)
DECLASSIFY ON: 12-29-2030

-----Original Message-----

From: (OGC) (FBI)

Sent: Tuesday, July 20, 2004 6:55 PM

To: BOWMAN, MARION E. (OGC) (FBI)

Subject: RE: QFRs #104

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~~SECRET~~
RECORD 66F-

Spike,

I took a shot at this, then decided I was being too confrontational to send it, so I'm passing on back to you as a "draft." In addition, I don't know how, in timely fashion, answer the first part without the specifics, which are secret.

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TEXT:

Several factors make the proposed requirement unnecessary.

First, the way "roving wiretaps" are provided for by FISA makes them uncommon in real-world application. That is, the FBI can obtain an order for a roving FISA wiretap only under circumstances in which we can show that the target of the proposed surveillance is doing something to make it difficult, if not impossible, to identify the carrier on whom an order may be served. As a matter of fact, this means roving FISA wiretaps are rare. Codifying a requirement is not going to impact a significant number of instances of electronic surveillance. That is to say, the optics of enacting such legislation may appear to protect innocent Americans from the FBI, but in reality it isn't going to apply to many surveillances at all.

 [S]

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6/14/2005

[S] b1
b5

~~(S)~~ (U)

The fact of the matter is that we already comply with a requirement that we determine whether the target of a wiretap is present, and legislating that rule would be carrying coals to Newcastle. As a matter of fact, the situation that arises more frequently in the real world is that the FBI is required to forego retention and use of information that really is foreign intelligence information. (S)

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In my experience, we have never obtained an order to wiretap a target we could not identify if we could not identify the premises to be surveilled, and I am having a difficult time imagining how we could satisfy the statutory requirements for a FISA order without showing PC to believe one or the other. I simply cannot see how we could make the necessary showing that the target was taking steps to obscure the carrier on whom to serve the order if, not knowing his identity, we could not specify the premises he was using.

-----Original Message-----

From: [redacted] CTD) (FBI)
Sent: Tuesday, July 20, 2004 2:39 PM
To: BOWMAN, MARION E. (OGC) (FBI); [redacted] (OGC) (FBI)
Subject: QFRs #104

b6
b7C

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Hello,

On 05/20/04 the Director testified before the Senate Judiciary, which has resulted in 270 QFRs to the FBI. Attached you will find one regarding your program. Can you have someone prepare an unclassified response to this question and get it back to [redacted] and myself by 07/22/04. Unfortunately, the deadline is immediate as this question was inadvertently left of the series of questions due to OCA on July 19th.

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b7C

Below is questions #104.

104. CTD. The Security and Freedom Ensured (SAFE) Act (S. 1709) would amend the roving wiretaps provision of the PATRIOT Act (section 206) by placing reasonable safeguards to protect the conversations of innocent Americans.

a. The SAFE Act would require the FBI to determine whether the target of the wiretap is present at the place being tapped. Since the FBI must already comply with this requirement when conducting roving wiretaps in criminal investigations (see 18 U.S.C. § 2518(11), (12)), why shouldn't Congress require the FBI to comply with this important requirement when conducting roving wiretaps in foreign intelligence investigations? Please explain.

b. The SAFE Act would also require the FBI to identify either the target of the wiretap or the place to be wiretapped. [redacted]

[redacted] This is a sensible requirement to protect innocent Americans who are not the target of an investigation,

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SECRET

6/14/2005

while still allowing the FBI to conduct surveillance of suspected terrorists or spies. Why shouldn't Congress enact this prudent safeguard? Please explain.

Thanks,



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~~**SENSITIVE BUT UNCLASSIFIED**~~

~~**DERIVED FROM: Multiple Sources**
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~**DERIVED FROM: Multiple Sources**
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~**DERIVED FROM: Multiple Sources**
DECLASSIFICATION EXEMPTION 1
SECRET~~

SECRET

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-31-2005 BY 65179 DMH/CLS

CA# 05-CV-0845

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OCA) (FBI) b6
Sent: Wednesday, July 21, 2004 7:13 PM b7C
To: [REDACTED] (ITD) (FBI) [REDACTED] (OGC) (FBI)
Cc: [REDACTED] (OGC) (FBI) [REDACTED] (OGC) (FBI) [REDACTED] (OGC) (FBI);
[REDACTED] (OGC) (FBI)
Subject: RE: QFRs #104

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

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[REDACTED]

Can we chat on Thursday? I've tried to put this information together with the question, and I'm confused because it seems like they are trying to MAKE presence of the target a requirement. I'm sure you can explain it to me. Can we talk?

[REDACTED] b2
Office of Congressional Affairs b6
JEH Building Room 7252 b7C
[REDACTED]

-----Original Message-----

From: [REDACTED] (ITD) (FBI) b6
Sent: Wednesday, July 21, 2004 4:32 PM b7C
To: [REDACTED] (OGC) (FBI)
Cc: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI) [REDACTED] (OGC) (FBI);
[REDACTED] (OGC) (FBI)
Subject: RE: QFRs #104

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Q #85 on roving wiretaps did not present this issue, thus the response [REDACTED] prepared for Q #85 did not address the issue presented in Q# 104. Might OCA already have sought and obtained a separate response associated with the legislation described: SAFE Act (s 1709) that could be used. For what its worth here's my thoughts:

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[REDACTED]

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[REDACTED]

b2
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6/14/2005



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-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Tuesday, July 20, 2004 4:55 PM
To: [REDACTED] (ITD) (FBI)
Subject: FW: QFRs #104

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b7C

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Sorry [REDACTED] I had the wrong e-mail address in the first e-mail.

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Tuesday, July 20, 2004 4:44 PM
To: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI)
Cc: Curran, John F. (OGC) (OGA); BOWMAN, MARION E. (OGC) (FBI)
Subject: FW: QFRs #104

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

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b7E

Help!! It appears that QFR #104 was assigned to the Office of Intelligence and they are referring it to us. The question has to do with imposing statutory safeguards on our use of roving wiretaps. [REDACTED] answered a roving wiretap QFR and that is why I am forwarding this e-mail to them. However [REDACTED] will be out of the office tomorrow so [REDACTED] offered up [REDACTED] to assist. I am forwarding this to [REDACTED] because I believe the FISA roving have mainly been used in [REDACTED] cases so whatever thoughts [REDACTED] could add would be great. Sorry for the short notice. We just received this request. Thanks.

-----Original Message-----

From: BOWMAN, MARION E. (OGC) (FBI)
Sent: Tuesday, July 20, 2004 4:32 PM
To: [REDACTED] (OGC) (FBI)
Subject: RE: QFRs #104

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b7C

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Yes, I guess so

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Tuesday, July 20, 2004 4:30 PM
To: BOWMAN, MARION E. (OGC) (FBI)
Subject: RE: QFRs #104

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b7C

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

It was not assigned to anyone in OGC. Do you want us to handle it?

-----Original Message-----

From: BOWMAN, MARION E. (OGC) (FBI)
Sent: Tuesday, July 20, 2004 4:13 PM
To: [REDACTED] (OGC) (FBI)
Subject: FW: QFRs #104

b6

b7C

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Did we or ILU handle a related question?

-----Original Message-----

From: [REDACTED] (CTD) (FBI)
Sent: Tuesday, July 20, 2004 2:39 PM
To: BOWMAN, MARION E. (OGC) (FBI); [REDACTED] (OGC) (FBI)
Subject: QFRs #104

b6

b7C

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Hello,

On 05/20/04 the Director testified before the Senate Judiciary, which has resulted in 270 QFRs to the FBI. Attached you will find one regarding your program. Can you have someone prepare an unclassified response to this question and get it back to [REDACTED] and myself by 07/22/04.

b6

Unfortunately, the deadline is immediate as this question was inadvertently left of the series of questions due to OCA on July 19th.

b7C

Below is questions #104.

104. CTD. The Security and Freedom Ensured (SAFE) Act (S. 1709) would amend the roving wiretaps provision of the PATRIOT Act (section 206) by placing reasonable safeguards to protect the conversations of innocent Americans.

a. The SAFE Act would require the FBI to determine whether the target of the wiretap is present at the place being tapped. Since the FBI must already comply with this requirement when conducting roving wiretaps in criminal investigations (see 18 U.S.C. § 2518(11), (12)), why shouldn't Congress require the FBI to comply with this important requirement when conducting roving wiretaps in foreign intelligence investigations? Please explain.

b. The SAFE Act would also require the FBI to identify either the target of the wiretap or the place to be wiretapped. [REDACTED]

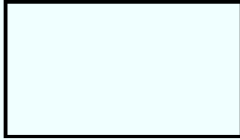
[REDACTED]
[REDACTED] This is a sensible requirement to protect innocent Americans who are not the target of an investigation, while still allowing the FBI to conduct surveillance of suspected terrorists or spies. Why shouldn't Congress enact this prudent safeguard? Please explain.

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Thanks,



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DATE 09-01-2005 BY 65179 DMH/CLS

CA# 05-CV-0845

LAMMERT, ELAINE N. (OGC) (FBI)

b6

b7C

From: [REDACTED] (OGC) (FBI)**Sent:** Tuesday, July 20, 2004 5:00 PM**To:** [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI)**Cc:** BOWMAN, MARION E. (OGC) (FBI); [REDACTED] (OGC) (FBI)**Subject:** RE: QFRs #104

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Listen [REDACTED] and I have not been involved in any roving wiretaps, and are going to be not very helpful here.

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[REDACTED] We are different because we are collecting intelligence to prevent a horrible occurrence. We are not just collecting evidence. We won't know where the target will be or where they will go.

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[REDACTED] have you seen a roving FISA?

b6

b7C

-----Original Message-----

From: [REDACTED] (OGC) (FBI)**Sent:** Tuesday, July 20, 2004 4:44 PM**To:** [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI)**Cc:** Curran, John F. (OGC) (OGA); BOWMAN, MARION E. (OGC) (FBI)**Subject:** FW: QFRs #104

b6

b7C

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

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b2

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b7E

-----Original Message-----

From: BOWMAN, MARION E. (OGC) (FBI)**Sent:** Tuesday, July 20, 2004 4:32 PM**To:** [REDACTED] (OGC) (FBI)**Subject:** RE: QFRs #104

b6

b7C

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Yes, I guess so

6/14/2005

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Tuesday, July 20, 2004 4:30 PM b6
To: BOWMAN, MARION E. (OGC) (FBI) b7C
Subject: RE: QFRs #104

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

It was not assigned to anyone in OGC. Do you want us to handle it?

-----Original Message-----

From: BOWMAN, MARION E. (OGC) (FBI)
Sent: Tuesday, July 20, 2004 4:13 PM b6
To: [REDACTED] (OGC) (FBI) b7C
Subject: FW: QFRs #104

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Did we or ILU handle a related question?

-----Original Message-----

From: [REDACTED] (CTD) (FBI) b6
Sent: Tuesday, July 20, 2004 2:39 PM b7C
To: BOWMAN, MARION E. (OGC) (FBI) [REDACTED] (OGC) (FBI)
Subject: QFRs #104

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Hello,

On 05/20/04 the Director testified before the Senate Judiciary, which has resulted in 270 QFRs to the FBI. Attached you will find one regarding your program. Can you have someone prepare an unclassified response to this question and get it back to [REDACTED] and myself by 07/22/04: Unfortunately, the deadline is immediate as this question was inadvertently left of the series of questions due to OCA on July 19th.

b6
b7C

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a. The SAFE Act would require the FBI to determine whether the target of the wiretap is present at the place being tapped. Since the FBI must already comply with this requirement when conducting roving wiretaps in criminal investigations (see 18 U.S.C. § 2518 (11), (12)), why shouldn't Congress require the FBI to comply with this important requirement when conducting roving wiretaps in foreign intelligence investigations? Please explain.

b. The SAFE Act would also require the FBI to identify either the

DECLASSIFIED BY 65179 DMH/CLS
ON 09-06-2005
CA# 05-CV-0845

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI)

b6

Sent: Friday, July 16, 2004 11:56 AM

b7C

To: [REDACTED] (CTD) (FBI)

Cc: [REDACTED] (OGC) (FBI)

[REDACTED] (OGC) (FBI)

[REDACTED]

Subject: CT Survival Guide

b2

~~SECRET~~
RECORD 66F-HQ-A1247863

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[REDACTED] National Security Law [REDACTED] OGC, asked me to review for legal sufficiency Section X of the draft "CT Survival Guide, entitled Patriot Act. My comments follow.

b5

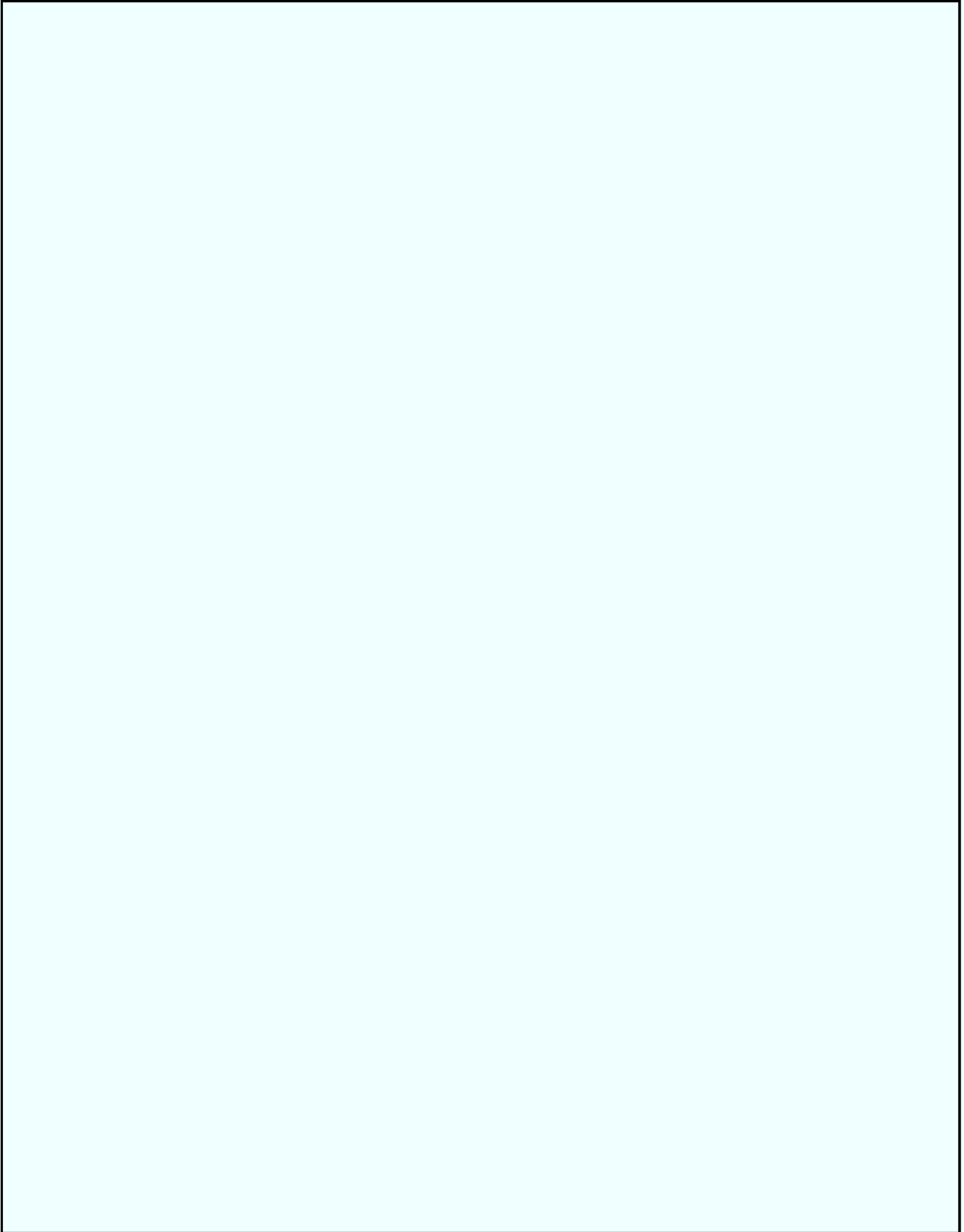
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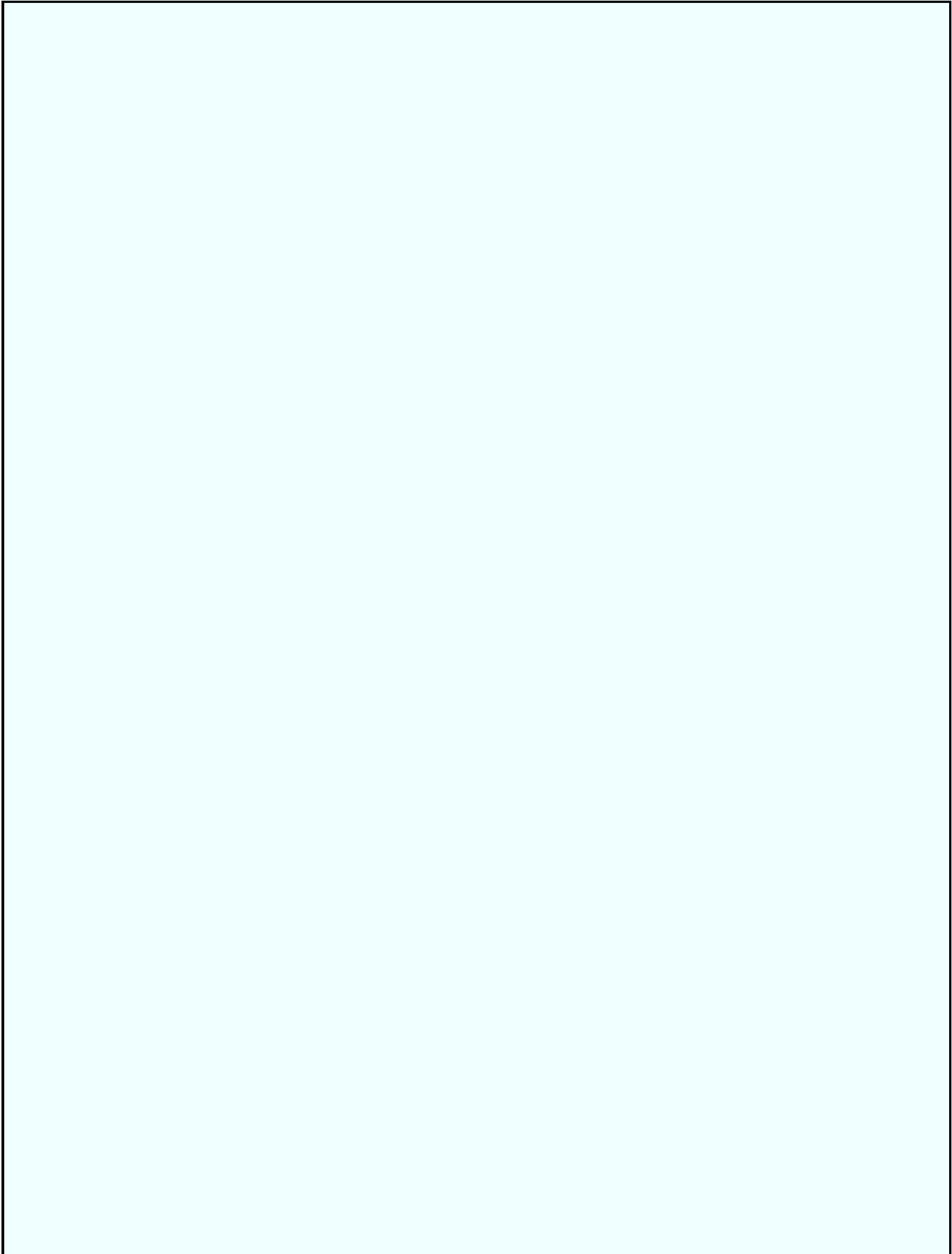
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6/14/2005





DATE: 12-15-2005
CLASSIFIED BY 65179 DMH/BAW/PVR
REASON: 1.4 (C)
DECLASSIFY ON: 12-15-2030

entire pages of 1, 2, 3, classified and part of page 33 in this review only

03-11-05-01-0045

SECRET

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~~Classified by: 7143, CTD~~
~~Declassify on: X1~~

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- Warrant issued only by Foreign Intelligence Surveillance Court (Attorney General in emergency)
- Ex Parte Order based solely on government's evidence
- Limited Disclosure/Covert Collection

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SECRET

CA# 05-CV-0845

[redacted] (OGC) (FBI)

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From: [redacted] (OGC) (FBI)**Sent:** Tuesday, July 13, 2004 1:17 PM**To:** [redacted] (OGC) (FBI) [redacted] (OGC) (FBI)**Cc:** [redacted] (OGC) (FBI) [redacted] (OGC) (FBI)**Subject:** FW: Sunset Provision Examples**Importance:** High~~SECRET~~

RECORD 66F-HQ-C1364260

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[redacted] of ILU needs immediate assistance with a tasking. Senator Feinstein wants to support the Bureau by promoting the renewal of the sunset provisions of the Patriot Act. In order to do so, she needs concrete examples of where the provisions have been useful to specific investigations. CTD provided case summaries but, in most of the cases, it is difficult to ascertain just how the provision(s) was useful to the investigation.

[redacted] and I discussed this tasking and determined that the best and most expedient way of assisting with this would be for the attorneys assigned to the substantive unit with responsibility for the case to review the summary and then meet with the HQ agent to positively determine just how the provision was useful. [redacted] cautioned that many of the agents are unfamiliar with the exact provisions of the Patriot Act. Some do not realize that the provisions used in the investigation derived from the Patriot Act and are destined to go away if not renewed. Thus, you may need to educate the agent about the provisions before discussing with them how they were useful to specific investigations. [redacted] is just looking for a couple of lines. [redacted] note below provides a good explanation.

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From my quick review, it looks like the bulk of these are CONUS II and III cases.

[redacted] SSA [redacted] are listed on many of the summaries. I think [redacted] but [redacted] of WFO is CONUS II as well.

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[redacted] Many summaries have SSA [redacted] name attached. I think he is CONUS III. SSA [redacted] is also listed as is SSA [redacted] (I think he is CONUS IV but you were kind enough to agree to take this in [redacted] absence).

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If I am wrong in my assignment to the two of you for all the summaries, please let me know ASAP. Sorry for the short deadline, and thanks. Please see [redacted] message below. Let me know if I can offer any help.

b6

b7C

-----Original Message-----

From: [redacted] (OGC) (FBI)**Sent:** Tuesday, July 13, 2004 12:36 PM**To:** [redacted] (OGC) (FBI)**Subject:** Sunset Provision Examples

b6

b7C

~~SECRET~~

RECORD 66F-HQ-C1364260

[redacted] As per our conversation earlier today, I'm soliciting the assistance of NSLB attorneys as they may be more familiar with the terrorism cases than I am. Attached is a list of case summaries submitted by CTD that may be examples of how the various sunset provisions of the Patriot Act were utilized. I have placed them in categories based upon the sunset provision that the field asserts was utilized on that case, however, for most cases it is difficult for me to ascertain how that provision was utilized and if it was helpful in the case.

6/14/2005

Could NSLB review the case summaries and talk to anyone in CTD or the field in order to advise me specifically how that provision of the Patriot Act was helpful. The information can be classified. Please provide that information to me either via a phone call TODAY, or via e-mail by COB today. I am under an extremely tight deadline so that a classified list of examples might be provided to Senator Feinstein in an effort to justify the renewal of these provisions.

Attached is both the classified submission by CTD and a brief synopsis of the effect of each provision.

Thank you in advance for your help on this effort!

[REDACTED]
ILU/OGC

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[REDACTED]

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~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET~~

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign CounterIntelligence Investigations
DECLASSIFICATION EXEMPTION 1
SECRET~~

6/14/2005

[REDACTED] (OGC) (FBI)

b6

From: [REDACTED] (OGC) (FBI)

b7C

Sent: Wednesday, July 07, 2004 4:08 PM

DECLASSIFIED BY 65179 DMH/CLS
ON 09-06-2005

CA# 05-CV-0845

To: [REDACTED] (CTD) (FBI)

Cc: [REDACTED] (OGC) (FBI); AINORA, THOMAS (OGC) (FBI)

Subject: Legal Review of "On the Job Guidebook"

~~SECRET~~

RECORD 66F-HQ-A1247863

b6

b7C

I and several National Security Law Branch attorneys are reviewing assigned portions of your draft "On the Job Guidebook" for legal sufficiency. I assigned myself the chapters on the Foreign Intelligence Surveillance Act and IOBs, which I'll do separately.

b5

b6

b7C

Also, in the first paragraph in that section [REDACTED]

b5

Same paragraph: A nit--the word "government" is never capitalized unless it appears with the initials "U.S." The same rule applies to the word "federal." GPO Style Manual.

Same section, third paragraph: [REDACTED]

Re the next page (p. 27), I believe you have melded your discussions of probable cause and primary purpose without intending to do so. I recommend you break them out as follows:

b5

b5

In criminal investigations, for years the courts applied a two-pronged test for probable cause. The first prong required police officers to assess the credibility of a source; the second prong required an assessment of the source's basis of knowledge. In a 1983 decision, Illinois vs. Gates (462 U.S. 213) the U.S. Supreme Court reviewed the state of the law to that point and concluded that the correct test for probable cause was a "totality of circumstances" test. While this test requires more than an unfounded suspicion, courts applying the Illinois vs. Gates standard have recognized that probable cause is less demanding than the evidentiary standard of beyond a reasonable doubt and is a lower standard than "preponderance of the evidence." As a result, magistrates reviewing criminal warrants are now simply required "to make a practical, common-sense decision whether, given all the circumstances set forth in [an] affidavit . . . this is a fair probability that . . . evidence of a crime will be found in a particular place." Illinois vs. Gates, 462 U.S. 213 at 238.

FISA has this same legal standard for probable cause: totality of the circumstances. However, unlike criminal cases where a magistrate is looking for specific evidence of a crime, the Foreign Intelligence Surveillance Court

6/14/2005

(FISC) will review an Agent's declaration of facts to determine whether probable cause -- i.e., a totality of circumstances -- exists to believe the target of proposed search or surveillance is a "foreign power" or "an agent of a foreign power," as those terms are defined in FISA. Additionally, if the subject of the proposed search or surveillance is a "United States person" as defined in FISA, the FISC must further determine whether probable cause exists to believe the target is engaged in activities that involve or may involve criminal conduct. See 50 U.S.C. § 1801(b). Additionally, for an electronic surveillance or search order to be issued, the FISC must also find that there is probable cause to believe that each of the facilities or places to be searched or surveilled is being used, or about to be used, by an a foreign power or an agent of a foreign power. Thus, while the specific findings of fact are different under FISA, in each instance the underlying legal standard -- i.e., the test for probable cause remains the same: the totality of the circumstances, just as it is in criminal cases."

b5

b5

The USA Patriot Act eliminated the wall entirely. Now, rather than requiring the Director of the FBI and the Attorney General to certify that "the purpose" of a FISA search or surveillance was to obtain foreign intelligence information, it is legally permissible to certify that "a significant purpose" of the FISA is to obtain foreign intelligence information. This change in the law thus eliminates the need for FBI investigators to evaluate whether an investigation has a predominately criminal or intelligence purpose. It no longer matters. The Attorney General has opined that FISA can now be used "primarily for a law enforcement purpose, so long as 'a significant purpose' is also to obtain foreign intelligence information. This change in the law thus permits the full coordination between intelligence community and law enforcement personnel. This fact is reflected in the current Attorney General Guidelines, which state in part:

[T]he FBI shall provide intelligence information expeditiously to other agencies in the Intelligence Community so that these agencies can take action in a timely manner to protect the national security in accordance with their lawful functions."

b2 ,b5, b6, b7C, b7E

From there [] I think you can return to your [] on page 27. In this regard, to ensure you and I are thinking the same thoughts, in the second full paragraph on p. 27 you indicate that

[] I think you need to be more precise in your choice of words.

b5

[] You describe this process correctly and completely in the next paragraph. I recommend you

[] The rest of that paragraph is legally sufficient as written.

Re the Section titled "Basic FISA Request Content," page 28, []

[] He does a lot of your work for you.

b5 ,b6, b7C

In the same section, I recommend []

b5

b5

6/14/2005

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CA# 05-CV-0845

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI) b6
Sent: Monday, June 07, 2004 11:13 AM b7C
To: [REDACTED] (OGC) (FBI)
Subject: RE: Draft Response to Sen. Feinstein on Sunset Provisions of the USA Patriot Act

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NON-RECORD

[REDACTED]

b5
b6
b7C

-----Original Message-----

From: [REDACTED] (OGC) (FBI) b6
Sent: Monday, June 07, 2004 11:00 AM b7C
To: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI);
[REDACTED] (OGC) (FBI)
Cc: BOWMAN, MARION E. (OGC) (FBI)
Subject: FW: Draft Response to Sen. Feinstein on Sunset Provisions of the USA Patriot Act

UNCLASSIFIED
NON-RECORD

I know it is really short notice (I advised OCA that I did not think we could get our comments to them by 11:00 am) but if you have comments please let us know.

-----Original Message-----

From: [REDACTED] (OCA) (FBI)
Sent: Monday, June 07, 2004 9:06 AM
To: [REDACTED] (OGC) (FBI); BOWMAN, MARION E. (OGC) (FBI); [REDACTED] b6
(OGC) (FBI); [REDACTED] (CID) (FBI); [REDACTED] (CID) (FBI); ANDRESS, BEVERLY (CD) b7C
(FBI); [REDACTED] (CD) (FBI); RUSSO, ROSANNE (CD) (FBI); [REDACTED] (CTD) (FBI);
HARRINGTON, T J. (CTD) (FBI); BAGINSKI, MAUREEN A. (DO) (FBI); [REDACTED] (DO) (FBI)
Subject: Draft Response to Sen. Feinstein on Sunset Provisions of the USA Patriot Act

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NON-RECORD

The attached testimony is being given before Congress. Please review the testimony and provide your comments, if any, to CAO. Please indicate if your division is in favor or opposed to the testimony as well as the reasons for your division's position. If your division opposes the testimony fully or in part, but believes that it can be remedied by changes in the verbiage, please describe in detail what should be added, deleted, or changed, including recommendations for substitute language sufficient to correct the objectionable section(s).

Please E-mail your comments to SSA [REDACTED] with a cc to [REDACTED] Your comments should be prepared in Microsoft Word format which is suitable for dissemination to DOJ and to congressional staff. Please send these comments to the CAO contact person as an

b6
b7C

6/14/2005

attachment to your E-mail. If you have additional comments which are not suitable for dissemination, please include them in the body of your E-mail separate and apart from the attachment. If your division is not taking a position and has no comments, please send an E-mail to the CAO contact person stating such.

DEADLINE 11:00 am 6-7-04. We appreciate your attention to this matter.

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UNCLASSIFIED

UNCLASSIFIED

CA# 05-CV-0845

[REDACTED] (OGC) (FBI)

b6

From: [REDACTED] (CA) (FBI)

b7C

Sent: Monday, June 07, 2004 9:06 AM

To: [REDACTED] (OGC) (FBI); BOWMAN, MARION E. (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (CID) (FBI); [REDACTED] (CID) (FBI); ANDRESS, BEVERLY (CD) (FBI); [REDACTED] (CD) (FBI); RUSSO, ROSANNE (CD) (FBI); [REDACTED] (CTD) (FBI); HARRINGTON, T J. (CTD) (FBI); BAGINSKI, MAUREEN A. (DO) (FBI); [REDACTED] (DO) (FBI)

Subject: Draft Response to Sen. Feinstein on Sunset Provisions of the USA Patriot Act

Follow Up Flag: Follow up

Due By: Monday, June 07, 2004 11:00 AM

Flag Status: Flagged

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NON-RECORD**

The attached testimony is being given before Congress. Please review the testimony and provide your comments, if any, to CAO. Please indicate if your division is in favor or opposed to the testimony as well as the reasons for your division's position. If your division opposes the testimony fully or in part, but believes that it can be remedied by changes in the verbiage, please describe in detail what should be added, deleted, or changed, including recommendations for substitute language sufficient to correct the objectionable section(s).

Please E-mail your comments to SSA [REDACTED] with a cc to [REDACTED]. Your comments should be prepared in Microsoft Word format which is suitable for dissemination to DOJ and to congressional staff. Please send these comments to the CAO contact person as an attachment to your E-mail. If you have additional comments which are not suitable for dissemination, please include them in the body of your E-mail separate and apart from the attachment. If your division is not taking a position and has no comments, please send an E-mail to the CAO contact person stating such.

b2

DEADLINE 11:00 am 6-7-04. We appreciate your attention to this matter.

b6

b7C

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Page 1 of 3

CA# 05-CV-0845

b6

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b7C

To: [REDACTED] (Div09) (FBI); [REDACTED] (Div09) (FBI);
A. (Div00) (FBI); BOWMAN, MARION E. (DM09) (FBI); [REDACTED] (Div09) (FBI);

(S) I spoke with Rachel Brand @ DOJ OLP. She advised as follows:
 Delayed Notice - use [] mes - although this is an old number and should be updated. She was not aware that it had been updated.
 Roving Wiretaps - # is classified
 215 Requests - # (0) was declassified in Sept '03, but has not been declassified since. In Rachel's opinion []

b5

--

b7C

NSLR will

b5

b7C

☐ I can provide you the results from the field survey that OGC conducted, however, I can also

~~SECRET~~

~~SECRET~~

guarantee that these are not entirely accurate numbers. The field survey was voluntary, and the level of detail provided varied between the field offices. Furthermore, since then I have been advised that some HQ divisions have been utilizing various Patriot Act tools, and I did not receive any contributions from any HQ division on this survey, so their use is not included in any numbers that I have.

The field offices reported the following:

Section 206 - Roving FISA orders [redacted] (S) b1
Section 215 - Use [redacted] (S) [redacted] (S) additional orders currently in approval process b2
Section 213 - Delayed Notice for Search Warrants - This is not a sunset provision, so we did not seek field input on this specific provision at this time. b7E

Also - as you are aware, field offices collect statistics on their accomplishments (i.e. search warrants executed). I believe that Finance Division maintains, compiles, and reports these statistics. They may have more accurate field wide numbers.

I hope this is helpful.

[redacted] b2
Assistant General Counsel b6
Investigative Law Unit
Office of the General Counsel b7C
[redacted]

-----Original Message-----

From: [redacted] (Div00) (FBI)
Sent: Tuesday, May 18, 2004 1:41 PM
To: BOWMAN, MARION E. (Div09) (FBI); [redacted] (Div09) (FBI); [redacted] (Div09) (FBI); [redacted] (Div09) (FBI)
Cc: [redacted] (Div00) (FBI) b6
Subject: Statistics re USA PATRIOT Act provisions b7C
Importance: High

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In anticipation of the Director's scheduled appearance before the Senate Judiciary Committee this Thursday, May 20th, we are trying to confirm the number of times we have used Delayed Notice (so-called "Sneak and Peek") Warrants, FISA Roving Wiretaps, and FISA Orders for Tangible Things (i.e., so-called Section 215 Orders), since passage of the USA PATRIOT Act.

I realize there are several potential complications with compiling such numbers (e.g., Delayed Notice Warrants used in traditional criminal cases, classification issues re 215 Orders, etc.). Nevertheless, if any of you could provide some input on this, it would be very helpful. We can almost guarantee the Director will be asked about the numbers when he testifies.

Is DOJ compiling numbers? Is there anyone at OLP or OIPR who may know?

Thanks,

[redacted] b2
Office of Congressional Affairs b6
[redacted] b7C

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[REDACTED] (OGC) (FBI)

From: [REDACTED] Div09) (FBI)

b6

DECLASSIFIED BY 65179 DMH/CLS
ON 09-06-2005

Sent: Tuesday, May 11, 2004 5:23 PM

b7C

CA# 05-CV-0845

To: [REDACTED] (Div09) (FBI)

Subject: Sunset Provisions

~~SECRET~~

RECORD 66F-HQ-C1364260

[REDACTED] Attached are the two documents I provided to OPA [REDACTED] The 1st document is the summary of the field survey that I'm currently putting together. I did leave in the classified portions for you. The 2nd document was a brief summary we provided to DOJ in March.

b6

b7C

The consistent comment from the field was that the information sharing provisions (203 and 218) were the most important provisions in the Patriot Act. As you know, they have significantly altered the way we conduct business on a daily basis. This was a consistent point made in the field responses. They pointed to the joint task forces, better communications with other agencies, better working relationships across the board because they are no longer stifled by fear that they may inadvertently share information incorrectly, better use of resources, etc.

While we know that 218 opened the door for more communications from the intell to the criminal side, does NSLB have any opinion on what effect the expiration of 218 would have on the FISC court opinion? Would this essentially then rebuild the wall?

If I can help, please feel free to contact me.

b2

b6

b7C

~~DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign Counterintelligence Investigations
DECLASSIFICATION EXEMPTION 1~~

~~SECRET~~

6/14/2005

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DATE: 12-16-2005
CLASSIFIED BY 65179 DMH/BAW/PVR
REASON: 1.4 (C)
DECLASSIFY ON: 12-16-2030

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**USA Patriot Act
Sunset Provisions
Field Office Comments
April 2004**

CA# 05-CV-0845

Section 201 & 202 - Expanded Title III predicates

These provisions expanded the predicate offenses for Title III intercepts to include crimes relating to chemical weapons (18 U.S.C. § 229), terrorism (18 U.S.C. §§ 2332, 2332a, 2332b, 2332d, 2339A, and 2339B), and felony violations of computer fraud and abuse (18 U.S.C. § 1030). Later amendments to this portion of the statute expanded the Title III predicates to also include 18 U.S.C. § 2232f (Bombings of places of public use, Government facilities, public transportation systems and infrastructure facilities) and 2339C (terrorism financing). Due to the timing and statutory placement of these two additional predicate offenses, it is likely that these are now included in the sunset provision.¹

Survey Results: The respondents to the field survey indicated that there was at least one Title III order where terrorism was identified as the predicate offense.

Section 203 (b) & (d) - Information sharing for foreign intelligence obtained in a Title III and criminal investigations.

Section 203(b) authorizes the sharing of foreign intelligence information obtained in a Title III electronic surveillance with other federal officials, including intelligence officers, DHS/DOD/ICE officials, and national security officials. The Homeland Security Act later authorized disclosure to foreign investigative or intelligence officials and to any federal, state, local, and foreign official when it reveals a threat of attack.

Note: The Congressional Research Services (CRS) report to Congress on the sunset provisions erroneously states that "termination of authority under subsection 203(b) may be a little consequence."² In fact, the termination of this provision would have absurd results

Essentially

Section 203(d) authorizes the sharing of foreign intelligence information collected in a criminal investigation with intelligence officials. The Homeland Security Act also added foreign intelligence and investigative officials to the list of receiving officials. Due to the

b5

¹See CRS Report for Congress, "USA Patriot Act Sunset: Provisions That Expire on December 31, 2005," dated January 2, 2004., CRS Report RS 21704.

²CRS Report RS 21704 at 5.

SECRET

~~SECRET~~

b1 ,b2, b5, b7E

[REDACTED]

(S)

b1 ,b2, b5, b7E

[REDACTED]

(S)

[REDACTED]

(S)

[REDACTED]

Section 207 - Extended Duration for Certain FISAs

b1 b2, b5, b6, b7C, b7E

Section 207 extends the standard duration for several categories of FISA orders.

[awaiting input from NSLB [REDACTED] on this]

b6

b7C

Section 209 - Seizure of Voice Mail with a Search Warrant

Section 209 clarified that voice mail could be obtained with a search warrant under 18 U.S.C. § 2703 (similar to e-mail). Previously, some courts had required a Title III order to obtain stored voice mail.

[REDACTED]

b1

[S]

Section 212 - Emergency Disclosures of E-mail & Records by ISPs

Section 212 created a provision that allows a service provider (such as an Internet Service Provider) to voluntarily provide the content and records of communications related to a subscriber if it involves an emergency related to death or serious injury. The Homeland Security Act modified this provision as it relates to the content of communications, but not as it relates to the records held by a service provider. For this reason, the Congressional Research Service concludes that only those provisions relating to the voluntary disclosure of records is subject to the sunset provision.³

³See CRS Report, page CRS-8.

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[was 2702 (c)(3) part of this provision? - allows for voluntary disclosure of records to protect their own property and rights.]



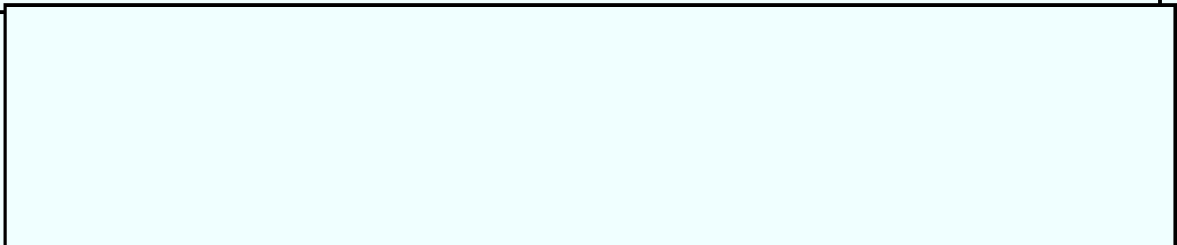
(S)

b1



[S]

b1



b7A

Section 214 - FISA Pen/Trap Authority

FISA pen/trap and trace orders are now available whenever the FBI certifies that “the information likely to be obtained is foreign intelligence information not concerning a United States person, or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.” This provision eliminated the previous requirement that the application also contain specific and articulable facts giving reason to believe that the targeted line was being used by an agent of a foreign power, or was in communications with such an agent, under specified circumstances. This provision now more closely tracks the requirements to obtain a pen/trap order under the criminal provisions set forth in 18 U.S.C. § 3123

[S]

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b1

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[Redacted]

b1

[Redacted]

(S)

b1

[Redacted]

(S)

b1

~~(S)~~

[Redacted]

(S)

b1

~~(S)~~

[Redacted]

(S)

b1

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~~SECRET~~

Section 215 - Access to Business Records under FISA

Section 215 changes the standard to compel production of business records under FISA to simple relevance (just as in the FISA pen register standard described above) and expands this authority from a limited enumerated list of certain types of business records [redacted]

[redacted] to include "any tangible things (including books, records, papers, documents, and other items for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution."

b2

b7E

[S]

-Again the field offices consistently report their frustration with the length of time to get any approvals from OIPR to utilize these provisions.

b1

One field office [redacted] confused the 215 stating it was an NSL. Check with them to determine which it was. (These are different provisions).

b2

b7E

~~SECRET~~

[redacted] (OGC) (FBI) b6

From: [redacted] (Div09) (FBI) b7C

Sent: Tuesday, May 04, 2004 4:54 PM

To: [redacted] (Div09) (FBI) [redacted] (Div09) (FBI) [redacted] (Div09) (FBI)

Cc: [redacted] (Div09) (FBI)

Subject: Patriot Act Section 215 - after sunset

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[redacted] b6
b7C

In compiling the information received from our recent field survey on the various sunset provisions, I'm also reading a report recently prepared by the Congressional Research Service for Congress on the various sunset provisions. The report states that if Section 215 is left to sunset, "the impact of expiration may be mitigated by changes in the law governing 'national security letters' that provide access to a wider range of business records"

This seems to be a confident statement that we will not be impacted by the expiration of Section 215. I know that I have already found an error in the report regarding Title III issues, and have alerted OEO to the misstatement so that it can be corrected. I bring this to your attention to provide you the same opportunity should you disagree with the statement.

If you have any questions, please feel free to contact me.

[redacted] b2
b6
b7C

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[REDACTED] OGC) (FBI)

From: [REDACTED] (Div09) (FBI)
Sent: Wednesday, April 28, 2004 9:12 AM
To: [REDACTED] (Div09) (FBI)
Subject: FW: 9/11 Commission Recommendations

b6
b7C

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[REDACTED] Please see [REDACTED] email below and GC's input. Thanks.

-----Original Message-----

From: [REDACTED] (Div09) (FBI)
Sent: Wednesday, April 28, 2004 9:10 AM
To: [REDACTED] (Div09) (FBI)
Subject: FW: 9/11 Commission Recommendations

b6
b7C

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NON-RECORD

[REDACTED]
Below is the final that went through the GC. Spike provided input on this as well. Hopefully, you didn't spend too much time on this.

[REDACTED]
-----Original Message-----

From: Caproni, Valerie E. (Div09) (FBI)
Sent: Wednesday, April 28, 2004 8:26 AM
To: KELLEY, PATRICK W. (Div09) (FBI)
Cc: [REDACTED] (Div09) (FBI); BOWMAN, MARION E. (Div09) (FBI); [REDACTED] (Div09) (FBI); [REDACTED] (Div09) (FBI)
Subject: RE: 9/11 Commission Recommendations

b6
b7C

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NON-RECORD

Those look good [REDACTED]
[REDACTED]

I have a question about the proposed change to AG exemptions: since it has to come to DC anyway (and presumably NSLU or ILU should be exercising some legal review of the requests) what is the real benefit of delegating down to the field offices?

b5

Can we do something for Acting SACs? As I recall, OIPR takes the position that an Acting SAC is of a rank lower than deputy assistant director. Maybe limit it to ACTING SACs that are SES?

-----Original Message-----

From: KELLEY, PATRICK W. (Div09) (FBI)
Sent: Tuesday, April 27, 2004 6:14 PM
To: Caproni, Valerie E. (Div09) (FBI)

6/14/2005

Cc: [REDACTED] (Div09) (FBI); BOWMAN, MARION E. (Div09) (FBI); [REDACTED] (Div09) (FBI); [REDACTED] (Div09) (FBI)
Subject: 9/11 Commission Recommendations

b6

b7C

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Boss: here's the recommendations I'd like to send to [REDACTED] for consideration of the 9/11 commission. It's not clear what our deadline is but [REDACTED] believes we need to get them ASAP. Thanks.

b6

b7C

April 27, 2004

TO: [REDACTED]

b6

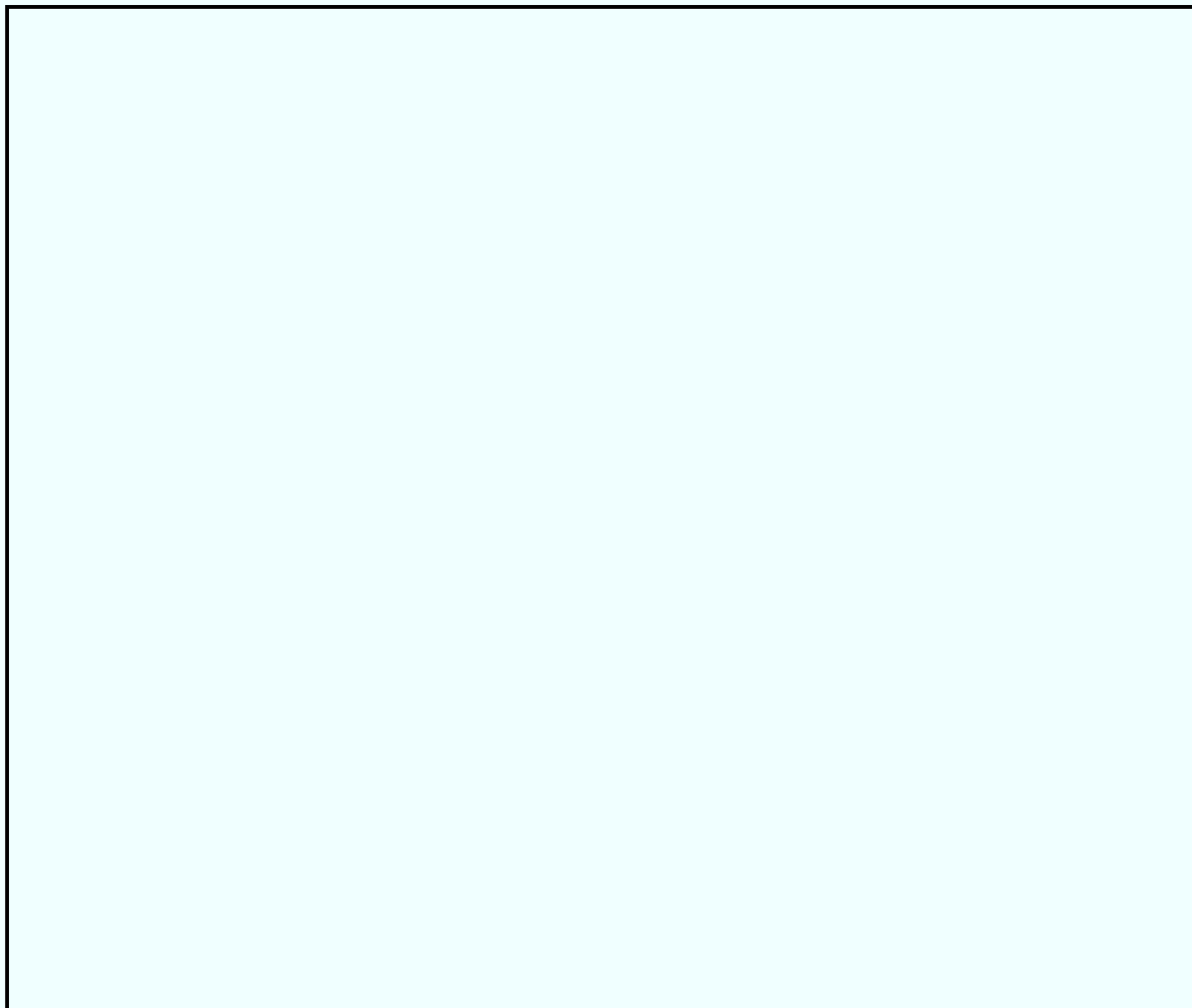
b7C

FROM: Patrick Kelley, Deputy General Counsel

Subj: Recommendations to the 9/11 Commission

The following recommendations are forwarded for possible consideration by the 9/11 Commission.

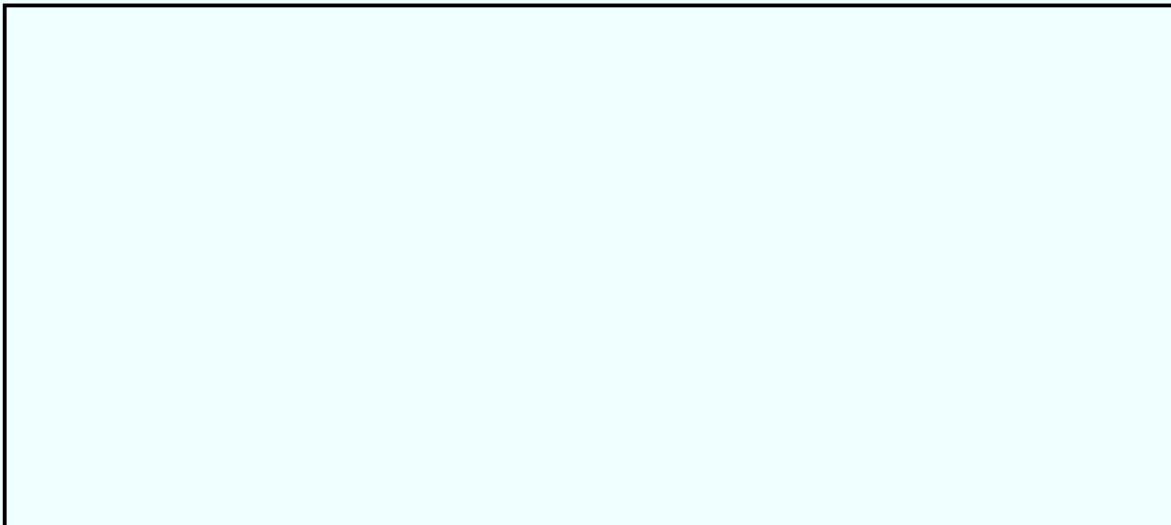
b5



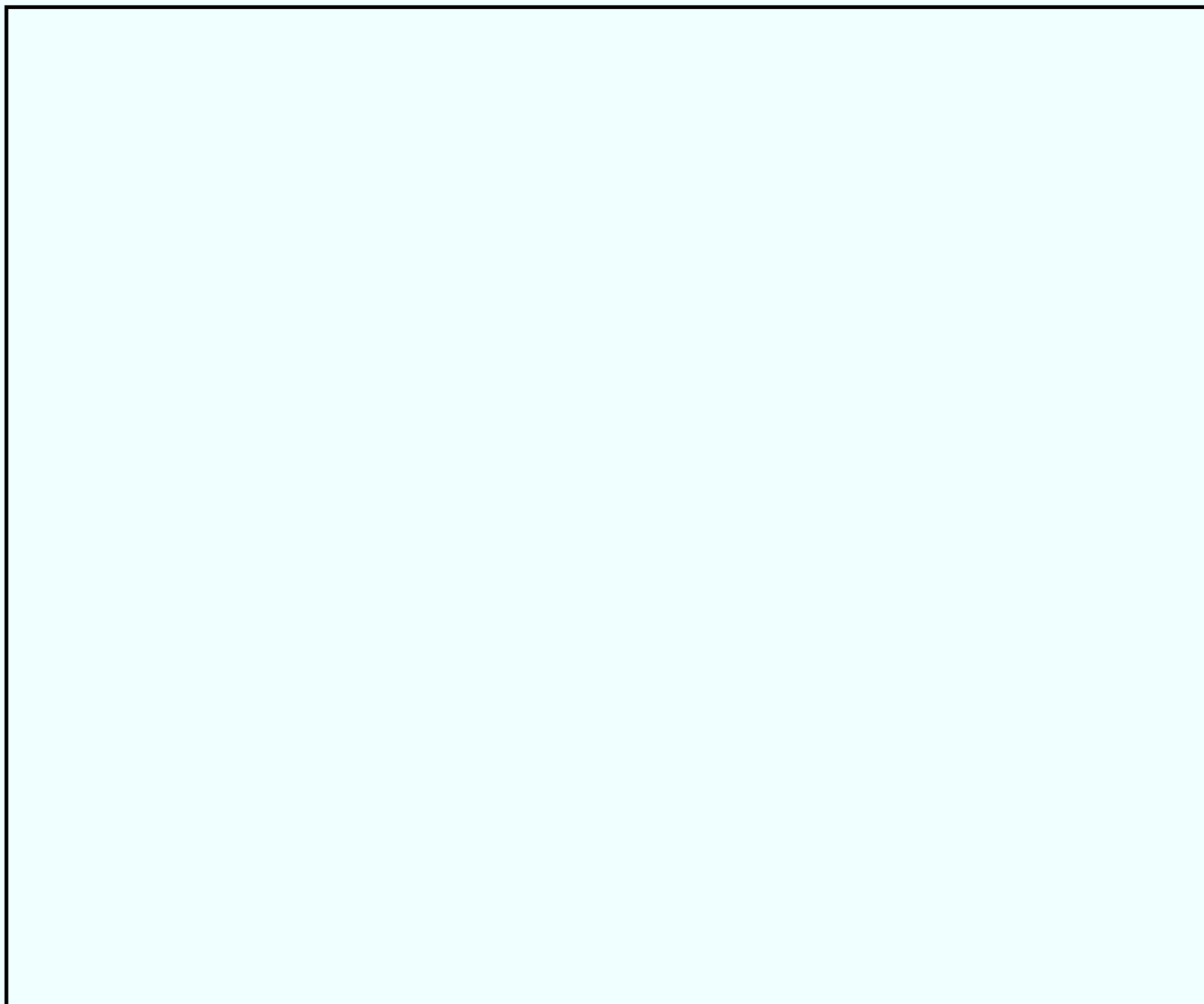
6/14/2005



b5



b5



b5

[redacted] (OGC) (FBI)

From: [redacted] (Div09) (FBI)
Sent: Tuesday, April 27, 2004 10:26 AM
To: [redacted] (Div09) (FBI) b6
Cc: [redacted] (Div09) (FBI) b7C
Subject: RE: Ponies

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CA# 05-CV-0845



sample letter.wpd
(31 KB)



2702-PA_letter
v2.wpd (33 KB)

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NON-RECORD

[redacted] b6

b7C

The first letter looks very well done. It clearly explains that this is a voluntary disclosure by the ISP, an important point. I offer the following comments:

1 - The standard for voluntary disclosure under 2702(b)(7) changed slightly with the Homeland Security Act. It now states that the provider must believe in "good faith" that the emergency exists. This was due to pressure from the ISPs. They didn't want to be in the position to have to determine if the law enforcement request was reasonable (under the old "Patriot Act" standard), but instead only to be held responsible to act in good faith. Also, the Homeland Security Act eliminated the requirement that the emergency be in regard to "immediate" death or serious physical injury, but instead that immediate action be required. (for a more detailed explanation, see the EC we drafted on this - that (FYI) is still not signed). (I edited the letter in this regard and attached it for your review)

Note - however, that these changes to the standard only effected (b)(7) regarding disclosure of content, and did not change the old standard for (c)(4) regarding records. Thus, the way this letter spells out the standard for both content and records is good. b5

[redacted]
[redacted] (see EC 66F-HQ-1085159-56 dated 10/14/03)

[redacted] b5

[redacted] b5

Again, this letter is very well done. These comments are intended to be only minor. It does provide more details than I have seen in the past, however, the past does not always dictate what is best. I have attached 2 documents. First, my minor edits to the statutory language in the letter, and second, the sample letter I attached to the EC I drafted.

Finally, [] you may not be aware that the reporting requirement for these disclosures under the Homeland Security Act has expired. We are no longer reporting these disclosures to DOJ as we did throughout last year. However, because it is a sunset provision, we are trying to keep records on this use of this provision in order to justify the need and provide solid examples of its use. b6

If there is anything further I can do to assist, please don't hesitate to contact me. b7C

Best wishes -

[]
-----Original Message-----

From: [] (Div09) (FBI) b6
Sent: Monday, April 26, 2004 9:54 AM b7C
To: [] (Div09) (FBI)
Subject: FW: Ponies

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NON-RECORD

[] Could you review the first letter and let me know if it conforms with other letters the FBI has used. Thanks. [] b6
b7C

-----Original Message-----

From: [] (WF) (FBI) b6
Sent: Monday, April 26, 2004 9:38 AM
To: [] (Div09) (FBI); [] (Div09) (FBI) b7C
Cc: Curran, John F. (Div09) (OGA)
Subject: FW: Ponies

UNCLASSIFIED
NON-RECORD

Attached is a sample of the warantless "Patriot Act" letters that ITOS is providing as a "go by".

-----Original Message-----

From: [] (WF) (FBI) b6
Sent: Monday, April 26, 2004 8:46 AM b7C
To: [] (WF) (FBI)
Subject: Ponies

UNCLASSIFIED
NON-RECORD

[] b6

b7C

I've attached a couple of ponies regarding ISPs that I got from some recent training. They are "Patriot Act" letters that look interesting. Below are comments that came with them from one of the CXS guys at HQ. []

I've attached an Emergency Request that was done straight out of ITOS II here -the SC signed off on it and I do not think ITOS II is routing them by NSLB

(but they should atleast report them, after the fact). The office will have to track and report how many of these are done, so check with your CDC for a control file number to route them to. I know SAC's can sign them in the field, but I do not think they can delegate that authoirty down (the same as NSL'S).

Oh, and the statute is 2703 on the criminal requests, 2703d for the logs, and 2703f for the preservation request.

UNCLASSIFIED

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UNCLASSIFIED

UNCLASSIFIED

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b7C

[REDACTED] (OGC) (FBI)

From: [REDACTED] (WF) (FBI)
Sent: Monday, April 26, 2004 9:38 AM
To: [REDACTED] (Div09) (FBI) [REDACTED] (Div09) (FBI)
Cc: Curran, John F. (Div09) (OGA)
Subject: FW: Ponies

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CA# 05-CV-0845



2702-PA_letter.wp d (29 KB)
PArequest.wpd (28 KB)

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NON-RECORD

Attached is a sample of the waranntless "Patriot Act" letters that ITOS is providing as a "go by".

-----Original Message-----

From: [REDACTED] (WF) (FBI)
Sent: Monday, April 26, 2004 8:46 AM
To: [REDACTED] (WF) (FBI)
Subject: Ponies

b6
b7C

UNCLASSIFIED
NON-RECORD

b6
b7C

I've attached a couple of ponies regarding ISPs that I got from some recent training. They are "Patriot Act" letters that look interesting. Below are comments that came with them from one of the CXS guys at HQ.. [REDACTED]

I've attached an Emergency Request that was done stright out of ITOS II here -the SC signed off on it and I do not think ITOS II is routing them by NSLB (but they should atleast report them, after the fact). The office will have to track and report how many of these are done, so check with your CDC for a control file number to route them to. I know SAC's can sign them in the field, but I do not think they can delegate that authoirty down (the same as NSL'S).

Oh, and the statute is 2703 on the criminal requests, 2703d for the logs, and 2703f for the preservation request.

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CA# 05-CV-0845

[REDACTED] (OGC) (FBI)

From: Caproni, Valerie E. (Div09) (FBI)
Sent: Wednesday, April 21, 2004 8:24 AM

b6

b7C

To: BOWMAN, MARION E. (Div09) (FBI); [REDACTED] (Div09) (FBI); [REDACTED]
(Div09) (FBI); Curran, John E. (Div09) (OGA); [REDACTED] (Div09) (FBI); [REDACTED]
[REDACTED] (Div09) (FBI); [REDACTED]

Subject: RE: Patriot Act

UNCLASSIFIED
NON-RECORD

This has not yet been fully cleared for release by DOJ so do not disseminate outside of NSLU. Also, if there is anything in it that gives anyone concern (i.e., are they disclosing too much about sources and methods) please let me know ASAP.

-----Original Message-----

From: BOWMAN, MARION E. (Div09) (FBI)
Sent: Wednesday, April 21, 2004 8:18 AM
To: [REDACTED] (Div09) (FBI); [REDACTED] (Div09) (FBI); Caproni, Valerie E. (Div09)
(FBI); Curran, John F. (Div09) (OGA); [REDACTED] (Div09) (FBI); [REDACTED] (Div09)
(FBI); [REDACTED]
Subject: Patriot Act

b6

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NON-RECORD

The attached was prepared by DOJ for the campaign to save the Patriot Act provisions that are slated to expire.

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Message

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Page 1 of 1

CA# 05-CV-0845

[REDACTED] (OGC) (FBI)

From: BOWMAN, MARION E. (Div09) (FBI)

b6

Sent: Wednesday, April 21, 2004 8:18 AM

b7C

To: [REDACTED] (Div09) (FBI); [REDACTED] (Div09) (FBI); Caproni, Valerie E.
(Div09) (FBI); Curran, John F. (Div09) (OGA); [REDACTED] (Div09) (FBI); [REDACTED]
[REDACTED] (Div09) (FBI); [REDACTED]

Subject: Patriot Act

UNCLASSIFIED
NON-RECORD

The attached was prepared by DOJ for the campaign to save the Patriot Act provisions that are slated to expire.

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6/14/2005

-b6

b7C

Subject: RE: Restrictions on sharing information with TTIC

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NON-RECORD

-----Original Message-----

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NON-RECORD

Section 203(d) of the Patriot Act provides that "Notwithstanding any other provision of law" it is lawful to share foreign intelligence or counterintelligence (as defined in 50 USC 401a) or foreign intelligence information obtained as part of a criminal investigation with any federal law enforcement, intelligence, protective immigration, national defense, or national security official in order to assist the receiving official in his official duties. The receiving official may use the information only as necessary in the conduct of his official duties subject to any limitation on the unauthorized disclosure of such information.

b5

b5

UNCLASSIFIED

UNCLASSIFIED

[REDACTED] (OGC) (FBI)

From: [REDACTED] (Div09) (FBI)

b6

Sent: Tuesday, March 30, 2004 3:42 PM

b7C

To: [REDACTED] (Div00) (FBI)

Cc: Curran, John F. (Div09) (OGA); BOWMAN, MARION E. (Div09) (FBI); [REDACTED] (Div09) (FBI); KELLEY, PATRICK W. (Div09) (FBI)

Subject: RE: DOJ Request for Response, due to DOJ MARCH 31

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CA# 05-CV-0845

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NON-RECORD

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[REDACTED] Here are your responses.

b7C

Question: Has the FBI served any NSLs on libraries since September 11, 2001 - yes or no - and if yes, on how many occasions?

Answer: No.

Question: Since September 11, 2001, what guidance has the Department provided to the FBI about the use of NSLs to obtain records from libraries and/or bookstores?

Answer: To the best of our knowledge [REDACTED]

b5

-----Original Message-----

From: [REDACTED] (Div00) (FBI)

Sent: Monday, March 29, 2004 8:21 AM

b6

To: [REDACTED] (Div09) (FBI)

b7C

Subject: RE: DOJ Request for Response, due to DOJ MARCH 31

UNCLASSIFIED
NON-RECORD

[REDACTED]

b5

[REDACTED]

b6

[REDACTED] email made it sound as though you would collect more info than that, and I'd love for you to avoid additional work, if possible.

b7C

Thanks. Sorry you keep inheriting these.

[REDACTED]

Office of Congressional Affairs
JEH Building Room 7252

b2

[REDACTED]

b6

b7C

-----Original Message-----

From: [REDACTED] (Div09) (FBI)

Sent: Sunday, March 28, 2004 10:36 AM

To: [REDACTED] (Div00) (FBI)

Cc: Curran, John F. (Div09) (OGA); KELLEY, PATRICK W. (Div09) (FBI); [REDACTED] (Div09) (FBI); [REDACTED] (Div09) (FBI)

6/14/2005

Subject: RE: DOJ Request for Response, due to DOJ MARCH 31

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NON-RECORD

[redacted] I'll be out of the office this week. Per this e-mail I have forwarded your request to [redacted]
[redacted] who will be [redacted]

b6
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[redacted] - Could you please assist [redacted] with these questions? I am not aware of any guidance issued by DOJ re: use of NSLs. Maybe [redacted] may know. Also, do we keep track of what entity we served NSLs on [redacted] The statistics we send to DOJ do not break it down this way. We may have to review all the ECS we have received to determine who was served with an NSL.

b5
b6
b7C

-----Original Message-----

From: [redacted] (Div00) (FBI)
Sent: Friday, March 26, 2004 5:14 PM
To: [redacted] (Div09) (FBI)
Cc: Curran, John F. (Div09) (OGA); KELLEY, PATRICK W. (Div09) (FBI)
Subject: DOJ Request for Response, due to DOJ MARCH 31
Importance: High

b6
b7C

UNCLASSIFIED
NON-RECORD

DOJ has just asked us to very quickly prepare responses to the following questions. The bad news is that their deadline is March 31 because of an upcoming hearing. The good news is that the questions are fairly narrow.

Could you please respond to the following? If I need to seek assistance from someone else, please let me know. Obviously, time is limited. I'm happy to come and pick up any documents responsive to 6A (note that they have not asked for FBI guidance, but only DOJ guidance to the FBI).

b5

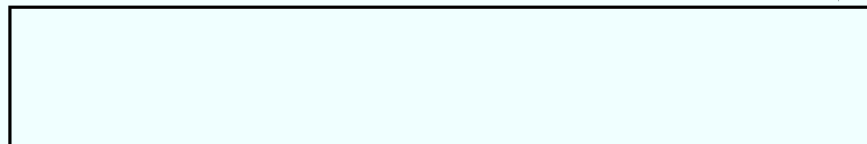
Thanks for your help.

[redacted]

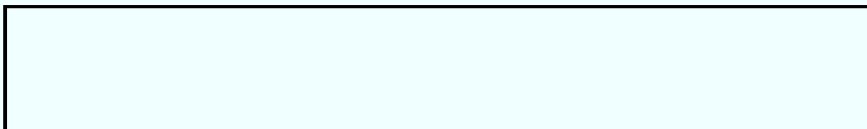
[redacted]

b5

6/14/2005



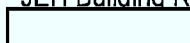
b5



b5



Office of Congressional Affairs
JEH Building Room 7252



b2

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b7C

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UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

b6
b7C

[REDACTED] OGC) (FBI)

From: [REDACTED] (Div09) (FBI)
Sent: Monday, March 08, 2004 2:33 PM
To: BOWMAN, MARION E. (Div09) (FBI); [REDACTED] (Div09) (FBI);
E; Curran, John F. (Div09) (OGA)
Subject: FW: PATRIOT ACT SUNSET PROVISIONS

Sensitivity: Private

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ON 09-07-2005
CA# 05-CV-0845

UNCLASSIFIED
NON-RECORD

FYI

-----Original Message-----

b6
b7C

From: [REDACTED]
Sent: Monday, March 08, 2004 1:16 PM
To: [REDACTED] (Div09) (FBI);
Cc: [REDACTED] (Div09) (FBI); [REDACTED] (Div09)
(FBI); [REDACTED] (RH); MANN, PHILIP J. (NF) (FBI); [REDACTED] (Div09) (FBI);
[REDACTED]
Subject: Re: PATRIOT ACT SUNSET PROVISIONS
Sensitivity: Private

b5
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SSA [REDACTED]

[REDACTED] Office of Division Counsel [REDACTED]

b2
b6
b7C

Privileged and ~~Confidential~~

>>> [REDACTED] (Div09) (FBI) 03/04 3:17 PM >>>
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See the attached EC that was uploaded today. See 66F-HQ-1364260-5.

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Message

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Page 1 of 1

CA# 05-CV-0845

[REDACTED] OGC) (FBI)

b6

b7C

From: Caproni, Valerie E. (Div09) (FBI)

Sent: Thursday, March 04, 2004 3:33 PM

To: [REDACTED] (Div09) (FBI); WAINSTEIN, KENNETH L.; BOWMAN, MARION E.
(Div09) (FBI); [REDACTED] (Div09) (FBI); [REDACTED] (Div09) (FBI); Curran,
John F. (Div09) (OGA); MUELLER, ROBERT S. III

Subject: Section 215 of the Patriot Act

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[REDACTED]

SENSITIVE BUT UNCLASSIFIED

b5

6/14/2005

[REDACTED] (OGC) (FBI)

From:
Sent:
To:
Cc:
Subject:

[REDACTED]
Friday, February 13, 2004 5:48 PM
BOWMAN, MARION E.
[REDACTED]
RE: Pending Issue Papers

b6

b7C

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DATE 09-07-2005 BY 65179 DMH/CLS

CA# 05-CV-0845



director issue



civiliberty

paper.wpd (8 KB... issues.wpd (15 KB)

Attached are two papers I did on impact of post 9/11 FBI investigations and Patriot Act on civil liberties and effect on mosques and libraries for the general counsel that may be suitable to go into issue papers. I also have some stuff on use of other PA provisions on FBI investigations and am seeking some more--when I get that I'll put it together and send it to you.

[REDACTED] b6

b7C

-----Original Message-----

From: BOWMAN, MARION E.
Sent: Wednesday, February 11, 2004 1:44 PM
To: [REDACTED]
Subject: FW: Pending Issue Papers

b6

b7C

Can your three put your heads together on this?

-----Original Message-----

From: [REDACTED] b6
Sent: Wednesday, February 11, 2004 1:56 PM b7C
To: [REDACTED] BOWMAN, MARION E.
Subject: Pending Issue Papers

Gentlemen,

Sorry to ask this of you, CTD needs some help putting together "Issue Papers" for the Director's upcoming testimony before the Senate & House Appropriation Committees regarding the FY2005 budget.

The hearings are open to the public, and therefore unclassified. Two of the topics we need help with deal with issues that NSLB has an intimate knowledge of. The first being FISAs, which we need an overview of the improvement made in the past year, what legal limitations we face, and any issues we may have with training as it relates to FISAs.

The second topic that needs to be addressed is the PATRIOT ACT, as it relates to:

1. How it has helped the FBI/Use of Expanded Authorities
2. Civil Liberties
3. Libraries
4. Mosques

I have been tasked to find this information and put it together for the front office by next Wednesday, 02/18/2004. Would someone from your Division be able to assist on these two issues? I want to make sure it is right with NSLB.

Thank You,

SSA [redacted]
CTD-Executive Staff
[redacted]

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b7C

Impact of the Patriot Act on Libraries/Bookstores and Mosques

Libraries/Bookstores: Despite media reports to the contrary, nothing in the Patriot Act is directed at or even mentions libraries or bookstores. Section 215 does permit the FISA Court to issue an order to produce "tangible things," including business and other records, in support of a foreign intelligence or international terrorism investigation. It also prohibits notice to the customer whose records are ordered produced.

This section has not yet been used at all and therefore there has been no actual impact on libraries or bookstores. [REDACTED]

[REDACTED] This authority cannot and will not be used to monitor the reading habits of library patrons or even those of certain groups or members of certain organizations. If used, it would be used in a specific case for a specific individual and based on a valid investigative reason. For example, [REDACTED]

b5

Therefore, if Section 215 were ever used to obtain patron records from a library or bookstore, its impact would be case specific, fleeting, isolated and, in the end, inconsequential to the day-to-day business of the Nation's libraries and bookstores.

b5

b5

*** Issue: Whether the FBI is using its new powers under the AG Guidelines to monitor the activities of lawful demonstrators/protestors under the guise of fighting terrorism.**

b5

*** Issue: Whether Section 215 of the Patriot Act permits the FBI to subvert due process by collecting information about Americans without notice or the opportunity to challenge the collection in a court of law.**

Comment: Section 215 of the Patriot Act permits the FISA court to issue an order to a third party owner/custodian of records pertaining to a party to produce those records in support of a national security investigation and, in addition, to prohibit notice to the party. This section (which has not been used to date) not only contains built-in judicial and congressional (requires reporting to Congress) oversight, it may only be used in support of a duly authorized and open national security investigation and must be viewed in the context of the other federal laws that regulate the collection of information. The Privacy Act is still alive and well and prohibits the collection and retention of personal information except for valid law enforcement purposes. Moreover, basic due process still requires that, before any such information can be used to the detriment of any person, that person will have his or her day in court to contest the information and the manner by which it was collected. The Patriot Act did nothing to change this basic tenet of American law. Finally, the no-notice provision, in addition to being essential to the FISA process, is, in practice, not much different than the use of federal grand jury subpoenas. Although the recipients of these subpoenas may resist compliance and gain access to court to state his case, the party to whom the records pertain has no such right, has no right to be notified that his/her records are sought, and a court may in fact prohibit notice to the party. Many such subpoenas are issued in the case of parties who are never indicted and therefore never know that their records were seized.

*** Issue: Whether Section 213 of the Patriot Act violates the constitutional rights of citizens by authorizing a judge to delay the required notice of the execution of a Rule 41 search warrant for a reasonable time.**

Comment: This section is merely a codification of the delayed notice or "sneak and peak" warrant already approved by the federal judicial system. The courts have found that

notice of the execution of a search warrant is not a constitutional requirement and have found that a reasonable delay of notice does not undermine Rule 41's requirement that notice be provided. All Section 213 did was codify existing law. In addition, it made it clear that delay must be for good cause, as must any extension of delay originally granted, and, finally, that any such warrant may not authorize the seizure of any property. The longest delay known to us at OGC has been 90 days but, again, the judge must be satisfied that delay and its particular length are justified by the reasons offered by the agent. In the end, all of this process will be exposed and the defendant will have the opportunity to contest the delay and seek a remedy.

*** Issue: Whether the FBI is collecting criminal evidence for prosecution using the national security intelligence collection processes of the Patriot Act with their lower standards and the absence of a criminal predicate. This is one of the fundamental criticisms of both the Patriot Act and the other post 9/11 regulations, directives, and guidelines. In summary, it is that because the "wall" between criminal prosecutions and national security investigations has been torn down, it will be easier for the government to collect information using national security legal process (NSLs, FISAs, foreign intelligence methods) which do not require a criminal predicate and turn that information into criminal evidence for prosecution--evidence that could not have been obtained through criminal process and which before the Act could not have been used to prosecute.**

Comment: *One answer to this is that, in fact, under the FISA statute, information obtained through the FISA process and other means always could have been used to prosecute and, in many instances, has. Espionage prosecutions, for example, have seen this. The Patriot Act and ensuing guidelines just makes it easier. Another answer to this is that, although the wall has come down and information sharing between the IC and prosecutors is easier, the burden of the prosecutor to prove his case through admissible, reliable, and properly authenticated evidence has not changed. In addition, the rights of the defendant to contest the evidence and the manner by which it was obtained was not affected by the Patriot Act. A third answer is that, although no criminal predicate is required, each of these national security processes has threshold criteria--such as probable cause for a FISA warrant--that are comparable to those in a corresponding criminal process. A Section 215 order compares roughly to a FGJ subpoena (plus judicial approval); an NSL for subscriber records to a FGJ or admin subpoena; a delayed-notice search warrant to a FISA physical search order.*

*** Issue: Whether the FBI's comprehensive data bases of known or suspected terrorists includes ordinary citizens and resident aliens whose names and identities are included by mistake and who have no recourse when they are denied travel and other basic rights.**

Comment: *The data bases that are, and will be, established pursuant to the Patriot Act's requirement to track foreign terrorists and the President's creation of the Terrorist Threat Integration Center (and the Terrorist Screening Center) have many contributors--not just the FBI. For the FBI's part, internal policy will restrict the input of personal data to known or suspected terrorists who are the subjects of duly authorized FBI national security investigations. In other words, the same criteria and predication in the Attorney General Guidelines that*

[REDACTED] OGC) (FBI)

From:

Sent:

To:

Cc:

Subject:

[REDACTED]
Wednesday, February 11, 2004 4:50 PM

Caproni, Valerie F

[REDACTED]
Sunset provisions

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CA# 05-CV-0845

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b7C

[REDACTED] had a good thought about how to get what OLP wants to prepare for the "sunset." Attached is a draft of an EC that we sent out in June 2002 about the Patriot Act to all Fos. In it, we say that several provisions would sunset unless renewed and for that reason offices were "encouraged" to keep records of their use of these provisions. In addition, CDCs were advised to do that at the CDC Conference and given a handout of what provisions would sunset and again asked them to keep examples of their usefulness and to send them to ILU. We haven't received any.

We should do an EC from a senior HQ official (you'll do or the DD) reminding the Fos of this earlier advice and then tasking them (SACs/ADICs) to collect stats/examples or at least to summarize in a narrative the value of each provision and why it should stay alive. I can write that if you want.

In addition, DOJ (OEO) should have stats on the 203/905 dissemination of FGJ and T-3 info to the IC and we could refer OLP to them. Also, we do have some stats about § 212 (voluntary emergency disclosure of e-mail content by an ISP) in my office. Perhaps, as well, OLP could be directed to OIPR for some of the FISA sunset provisions--214 (pen/trap trace), 206 (roving FISAs).

[REDACTED]
[REDACTED]
b6

b7C

(OGC) (FBI)

From: (OGC) (FBI)

b6

Sent: Thursday, March 17, 2005 2:37 PM

b7C

To: [redacted] OGC (FBI) [redacted] OGC (FBI) [redacted]
(OGC) (FBI)

Cc: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI);
[REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI);

Subject: RE: Patriot act provision re: public libraries

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CA# 05-CV-0845~~

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NON-RECORD

[S]

Since the passage of the Patriot Act, we know that there was one NSL [redacted] for certain records. I can dig up the example if you need it. There have been no business records served on libraries (or bookstores for that matter). [redacted]

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b7C

-----Original Message-----

From: [REDACTED] (OGC) (FBI)

Sent: Thursday, March 17, 2005 1:00 PM

To [redacted] (OGC) (FBI) [redacted] (OGC) (FBI) [redacted] (OGC) (FBI)

Cc: [redacted] (OGC) (FBI) [redacted] (OGC) (FBI); [redacted] (OGC) (FBI) [redacted] (OGC) (FBI) [redacted] (OGC) (FBI) [redacted] (OGC) (FBI)

Subject: RE: Patriot act provision re: public libraries

b6
b7C

UNCLASSIFIED
NON-RECORD

I mean business records request (Section 215). Right?

b6
b7C

-----Original Message-----

From (OGC) (FBI)

Sent: Thursday, March 17, 2005 12:55 PM

To [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)

Cc: [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC)
(FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC)
(FBI); [REDACTED] (OGC) (FBI)

Subject: Patriot act provision re: public libraries

UNCLASSIFIED
NON-RECORD

CTD is assisting Office of Congressional Affairs prepare the Director for testimony re: patriot act and its sunset provision (December, 2005?). You are probably going to be getting questions about success stories related to the changes made by the Act. One question I have gotten is about the provision permitting the FBI to review records at a public library. CTD is having difficulty determining if this was ever utilized. Does anyone know?

I haven't even been able to determine what the procedure would have been for anyone seeking to use this provision, does anyone know what the process would be?

DATE: 12-30-2005
CLASSIFIED BY 65179DMH/baw 05-cv-0845
REASON: 1.4 (C)
DECLASSIFY ON: 12-30-2030

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WHERE SHOWN OTHERWISE

6/14/2005

~~SECRET~~

~~SECRET~~

[REDACTED]

NSLB - CTL01

LX 1 room 5S 217

Outside #: [REDACTED]

Internal #: [REDACTED]

Pager: [REDACTED]

b2

b6

b7C

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~~UNCLASSIFIED~~

~~UNCLASSIFIED~~

~~SECRET~~

[redacted] (OGC) (FBI)

From: [redacted] (OGC)(FBI)

b6

Sent: Thursday, March 17, 2005 1:01 PM

b7C

To: [redacted] (CTD) (FBI)

Cc: [redacted] (OGC)(FBI)

[redacted] (OGC) (FBI)

(OGC) (FBI)

[redacted] (OGC) (FBI)

Subject: Follow-up Re Director's Senate Testimony

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NON-RECORD

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Here's some additional guidance beyond that which OCA offered (below).

Some examples of PATRIOT Act success that may prove helpful:

- **Sharing grand jury, Title III, and criminal investigative information.** [Sec. 203 was intended to eliminate barriers to timely sharing of information between criminal investigators and other entities (e.g., the IC, ICE, DoD, etc.) involved in the protection of national security. It gave the FBI full discretion to share criminal investigative information, regardless of its source, whenever it involves foreign intelligence information.]

b1 ,b2, b7E

- **"Roving" FISA ELSUR authority.** [Sec. 206 was intended to counter a FISA target's attempts to use tradecraft to defeat ELSUR] [redacted] [S]
[redacted] avoiding the [redacted]

- **Changes in FISA PR/TT authority.** [Sec. 214 eliminated one of the showings that was previously required--i.e.] [redacted]

[redacted] now, the focus is simply on relevance to an
[redacted] investigation.]

b2

b7E

- **Changes in FISA business records authority.** [Sec. 215 assists the FBI in compelling production of business records. Previously, the FBI encountered situations in which holders of relevant records refused to produce them absent a subpoena or other compelling authority. Now, the FBI can seek a FISA court order for any such materials. Furthermore, the categories of things now attainable are much broader] [redacted]

- Also, if your folks happen upon any instances in which **library records** were obtained, that information would likewise be helpful.

b2

b7E

Again, sincere thanks to you and your folks for all your help.

6/14/2005

[REDACTED] OGC) (FBI)

b6

From: [REDACTED] OGC) (FBI)

b7C

Sent: Monday, March 21, 2005 2:13 PM

To: [REDACTED] OGC) (FBI); [REDACTED] OGC) (FBI)

Subject: Revised PATRIOT Act Director Testimony

Importance: High

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 09-01-2005 BY 65179 DMH/CLS

CA# 05-CV-0845

UNCLASSIFIED
NON-RECORD

See attached.

UNCLASSIFIED

6/14/2005

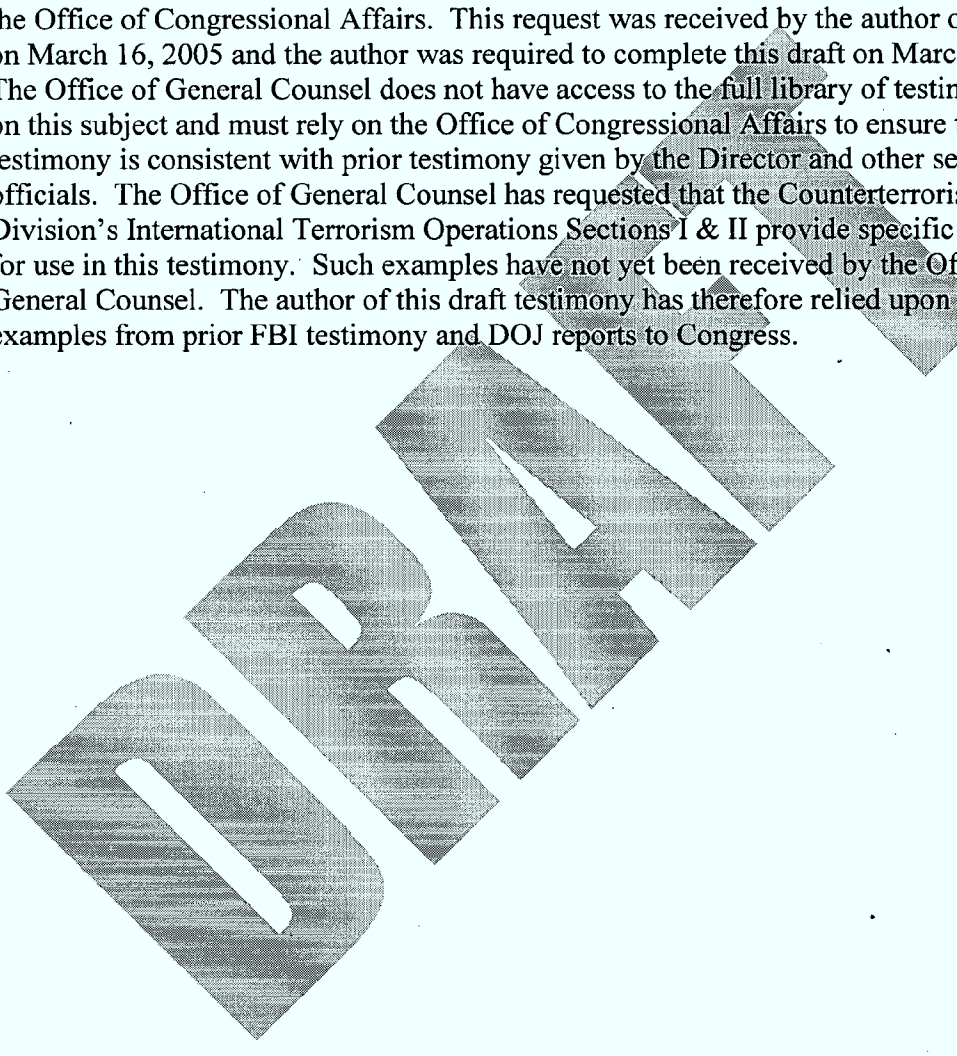
REVISED 3/21/05

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 09-01-2005 BY 65179 DMH/CLS
CA# 05-CV-0845

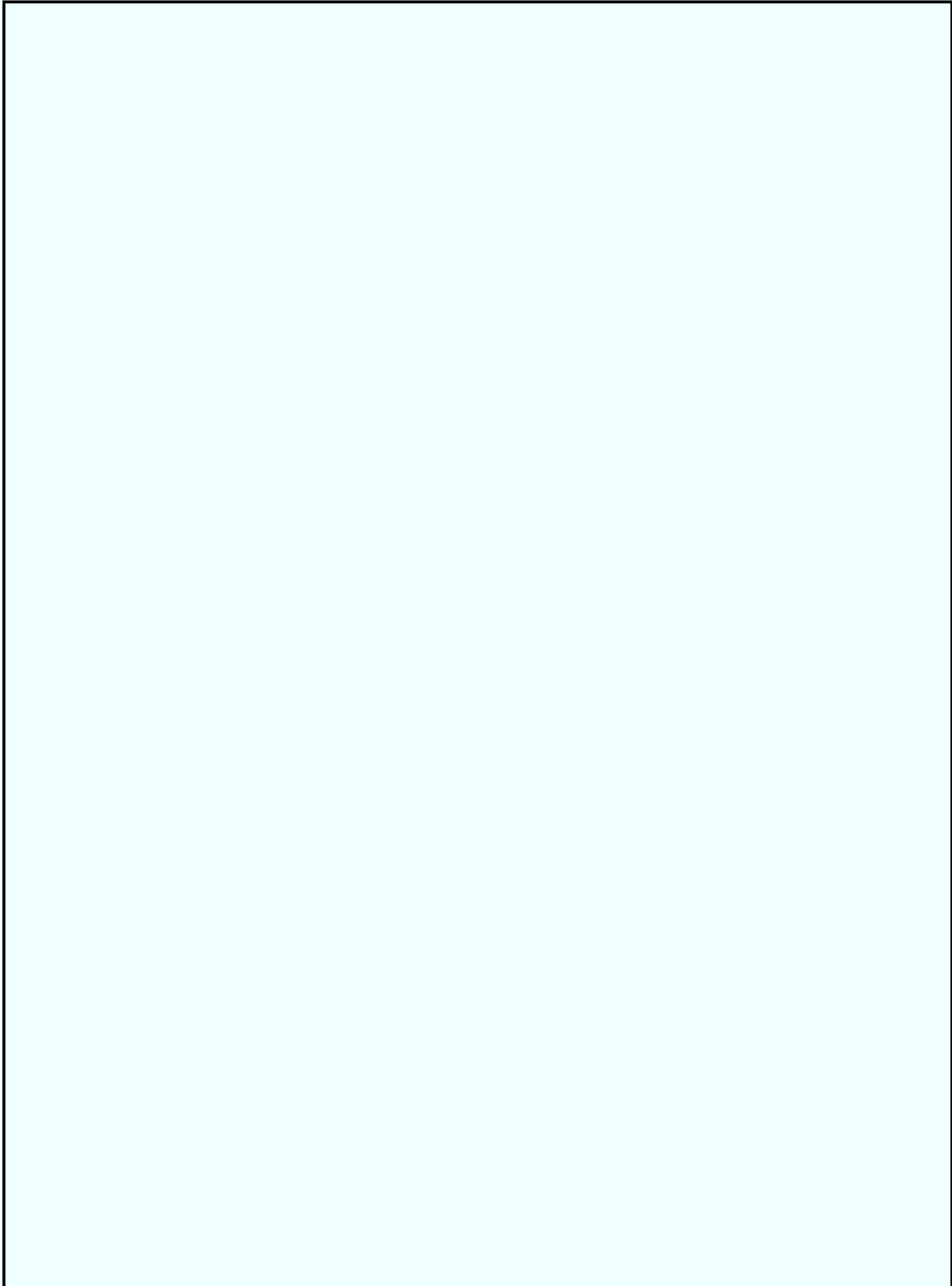
**FBI
Office of General Counsel
National Security Law Branch**

March 21, 2005

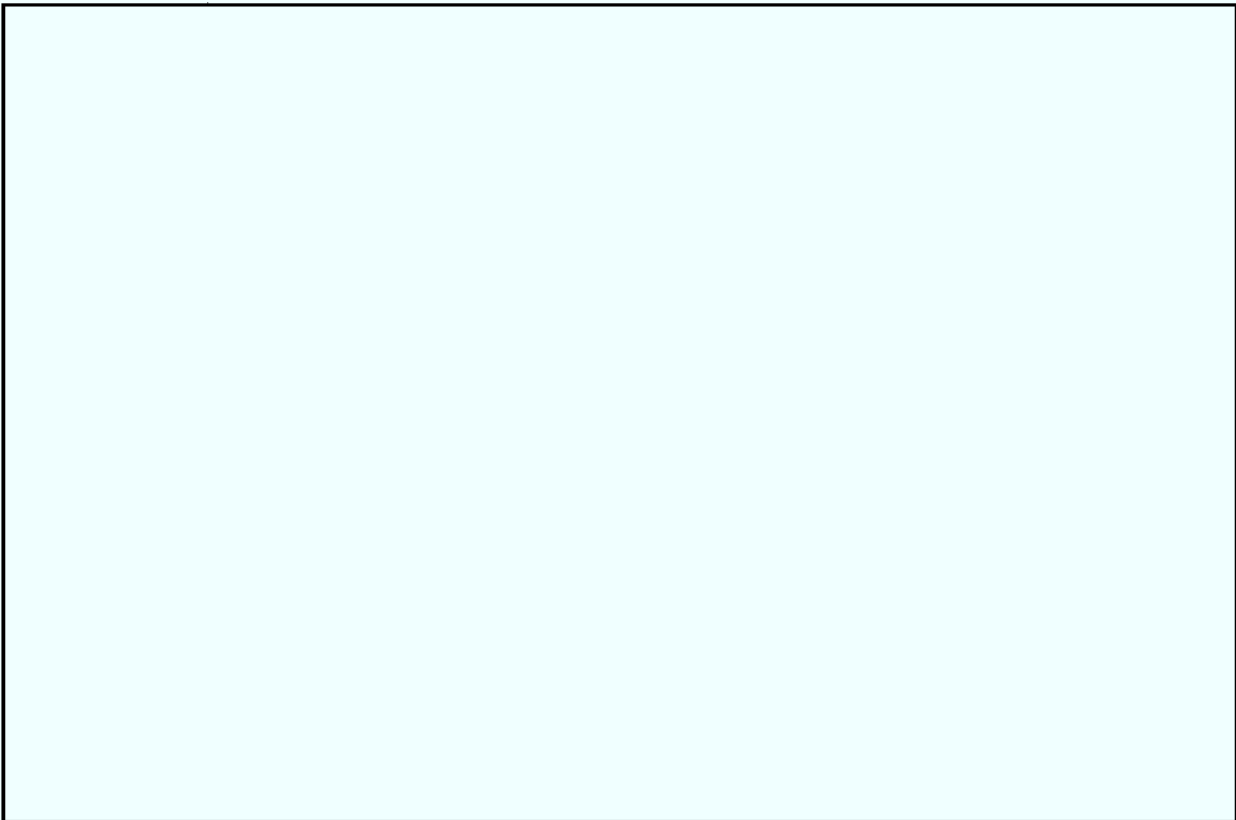
The Office of General Counsel has prepared this draft testimony at the request of the Office of Congressional Affairs. This request was received by the author of the draft on March 16, 2005 and the author was required to complete this draft on March 21, 2005. The Office of General Counsel does not have access to the full library of testimony given on this subject and must rely on the Office of Congressional Affairs to ensure that all testimony is consistent with prior testimony given by the Director and other senior FBI officials. The Office of General Counsel has requested that the Counterterrorism Division's International Terrorism Operations Sections I & II provide specific examples for use in this testimony. Such examples have not yet been received by the Office of General Counsel. The author of this draft testimony has therefore relied upon the examples from prior FBI testimony and DOJ reports to Congress.



REVISED 3/21/05



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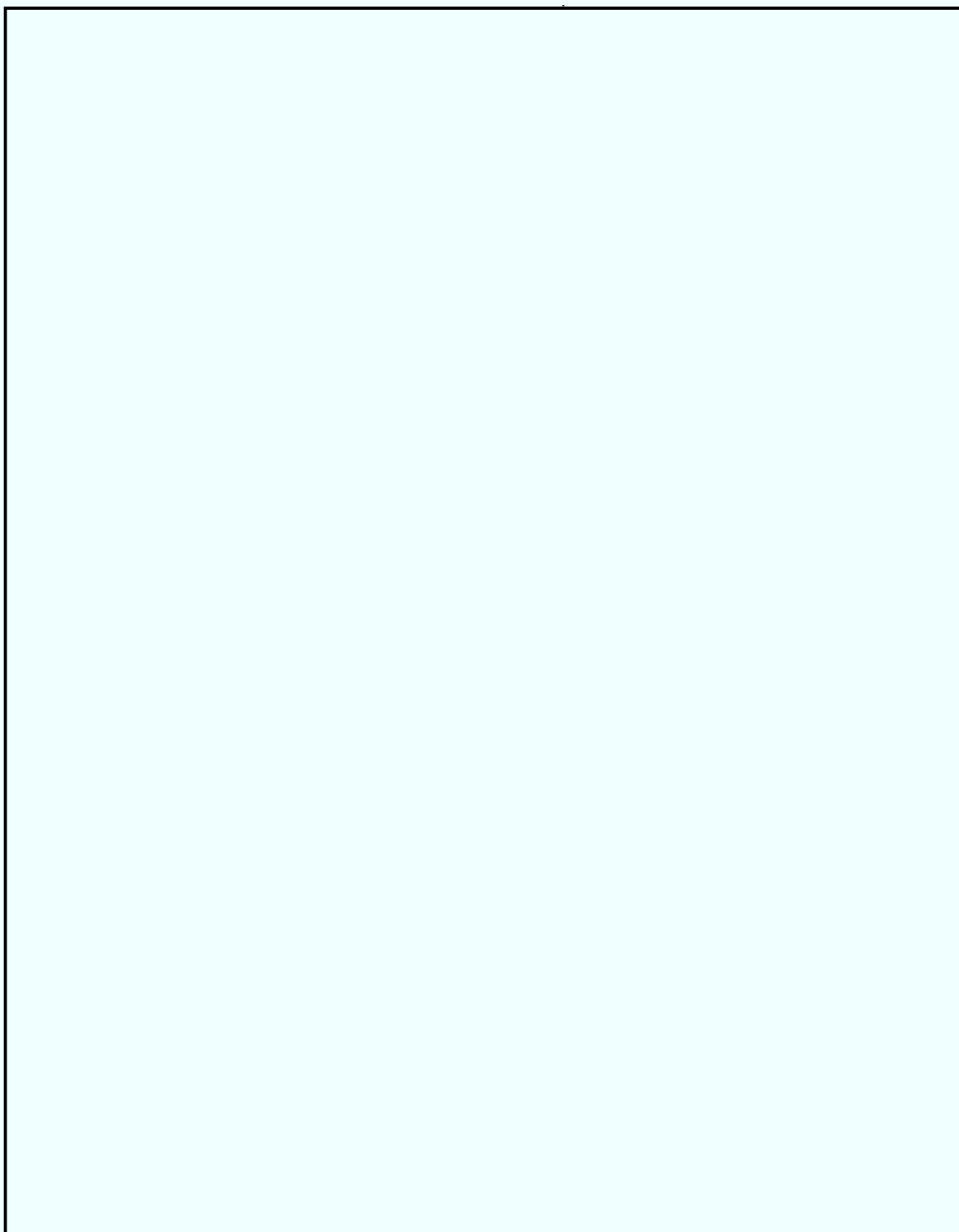


ADDITIONAL TOOLS TO FIGHT TERRORISM

As I have described above, the PATRIOT Act has been invaluable in providing the FBI with tools that it needs to fight terrorism in the 21st Century. This committee has been one of our strongest supporters in this effort and for this the men and women of the FBI are grateful. Having said that, I would like to address two areas in which the FBI needs the committee's support in order to continue to fulfill its primary mission of protecting America from further terrorist attacks.



REVISED 3/21/05



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Administrative Subpoenas

[REDACTED]

Planning, funding, supporting and committing acts of terrorism all are federal crimes. For many years, the FBI has had administrative subpoena authority for investigations of crimes ranging from drug trafficking to health care fraud to child exploitation. Yet, when it comes to terrorism investigations, the FBI has no such authority.

Instead, we rely on two tools – National Security Letters (NSLs) and orders for FISA business records. Although both are useful and important tools in our national security investigations, administrative subpoena power would greatly enhance our abilities to obtain information. Information that may be obtained through an NSL is limited in scope and currently there is no enforcement mechanism. FISA business record requests require the submission of an application for an order to the FISA Court. In investigations where there is a need to obtain information expeditiously this may not be the most effective process to undertake. Furthermore, FISA disclosure rules would apply, affecting the FBI's ability to share information expeditiously. The administrative subpoena power would be a valuable complement to these tools and provide added efficiency to the FBI's ability to investigate and disrupt terrorism operations and our intelligence gathering efforts. It would provide the government with an enforcement mechanism which currently does not exist with NSLs. Moreover, it would bring the authorities of agents and analysts investigating terrorism into line with the authorities the FBI already has to combat other serious crimes. I would like to stress that the administrative subpoena power proposal could provide the recipient the ability to quash the subpoena on the same grounds as a grand jury subpoena.

CONCLUSION

Mr. Chairman and Members of the Committee, the importance of the provisions of the PATRIOT Act I have discussed today in the war against terrorism cannot be overstated. They are crucial to our present and future successes. By responsibly using the statutes provided by Congress, the FBI has made substantial progress in its ability to proactively investigate and prevent terrorism and protect lives, while at the same time protecting civil liberties. In renewing those provisions scheduled to "sunset" at the end of this year, Congress will ensure that the FBI will continue to have the tools it needs to combat the very real threat to America posed by terrorists and their supporters. In addition, by granting further modifications to the Foreign Intelligence Surveillance Act and by giving the FBI administrative subpoena authority, Congress will enable the FBI to be more efficient in its Counterterrorism efforts. Thank you for your time today.

[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI)

b6

Sent: Wednesday, March 23, 2005 9:27 AM

b7C

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 09-01-2005 BY 65179 DMH/CLS

To: Caproni, Valerie E. (OGC) (FBI)

CA# 05-CV-0845

Cc: [REDACTED] (OGC) (FBI) [REDACTED] (OGC) (FBI)

Subject: Updated Draft Director's Senate Judiciary Testimony on PATRIOT ACT

UNCLASSIFIED
NON-RECORD

Valerie:

[REDACTED] asked me to make a few more tweaks and then to e-mail the attached to you.

b6

Thanks,

b7C

[REDACTED]

=====

[REDACTED]

Assistant General Counsel
National Security Law Branch
FBIHQ Room 7975

b2

Direct Line: [REDACTED]

b6

Unclassified Fax: [REDACTED]

b7C

Secure Fax: [REDACTED]

UNCLASSIFIED

[redacted] (OGC) (FBI) b6
 From: [redacted] (OGC) (FBI) b7C
 Sent: Wednesday, March 30, 2005 8:05 AM
 To: [redacted] (OGC) (FBI) [redacted] (OGC) (FBI) [redacted]
 (OGC)(FBI); THOMAS, JULIE F. (OGC) (FBI)
 Subject: FW: Roving Authority

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

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 DATE 09-01-2005 BY 65179 DMH/CLS

CA# 05-CV-0845

Please note:

The number of Section 206 orders since the Patriot Act's signing to date [redacted] [S] b1

[redacted]
 National Security Law Policy and Training Unit
 FBI HQ Room 7975
 STU III: [redacted]
 Unclassified Fax: (202) 324-1023 b2
 Secure Fax: (202) 324-9361 b6
 -----Original Message----- b7C
 From: [redacted] (OGC) (FBI)
 Sent: Monday, March 28, 2005 4:36 PM
 To: [redacted] (OGC) (OGA)
 Cc: [redacted] (OGC) (FBI) [redacted] (OGC) (FBI)
 Subject: RE: Roving Authority

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Perfect. Thanks.

-----Original Message----- b6
 From: [redacted] (OGC) (OGA) b7C
 Sent: Monday, March 28, 2005 4:03 PM
 To: [redacted] (OGC) (FBI)
 Cc: [redacted] (OGC) (FBI) [redacted] (OGC) (FBI)
 Subject: RE: Roving Authority

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[redacted] just answered a similar question via an email from Valerie. The number of Section 206 orders since the Patriot Act's signing to date is [redacted] Does that give you what you need? Let me know if not [redacted]

[S]

-----Original Message----- b1
 From: [redacted] (OGC) (FBI) b6
 b7C

6/14/2005

Sent: Monday, March 28, 2005 10:10 AM

To: [redacted] (OGC) (OGA)

Cc: [redacted] (OGC) (FBI) [redacted] (OGC) (FBI)

Subject: Roving Authority

b6

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[redacted]

I am writing to follow up on a phone conversation I had with [redacted] last week before she left for vacation. Valerie Caproni has asked NSLB to determine how many times FISA Roving authority has been granted since the change in the law. [redacted] told me that you were compiling that information and other, similar, statistics. When you get the number, could please send it to us?

b6

Thanks for your help.

b7C

Best,

[redacted]

=====

[redacted]
Assistant General Counsel

b2

National Security Law Branch

b6

FBIHQ Room 7975

b7C

Direct Line: [redacted]

Unclassified Fax: 202.324.1023

Secure Fax: 202.324.9361

SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

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SENSITIVE BUT UNCLASSIFIED

DATE: 09-01-2005

CLASSIFIED BY 65179 DMH/CLS

REASON: 1.4 (C)

DECLASSIFY ON: 09-01-2030

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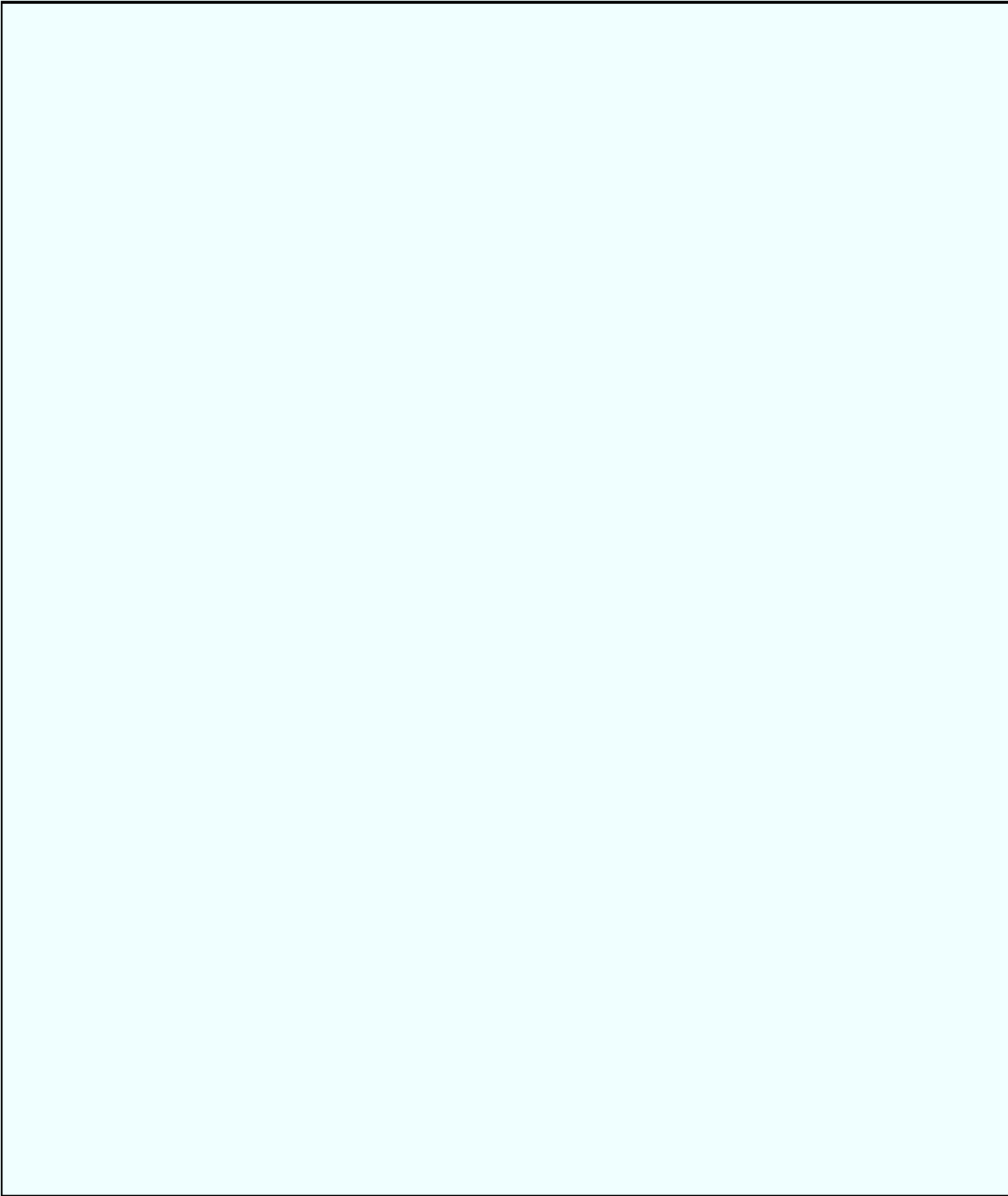
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~~SECRET//ORCON/NOFORN~~

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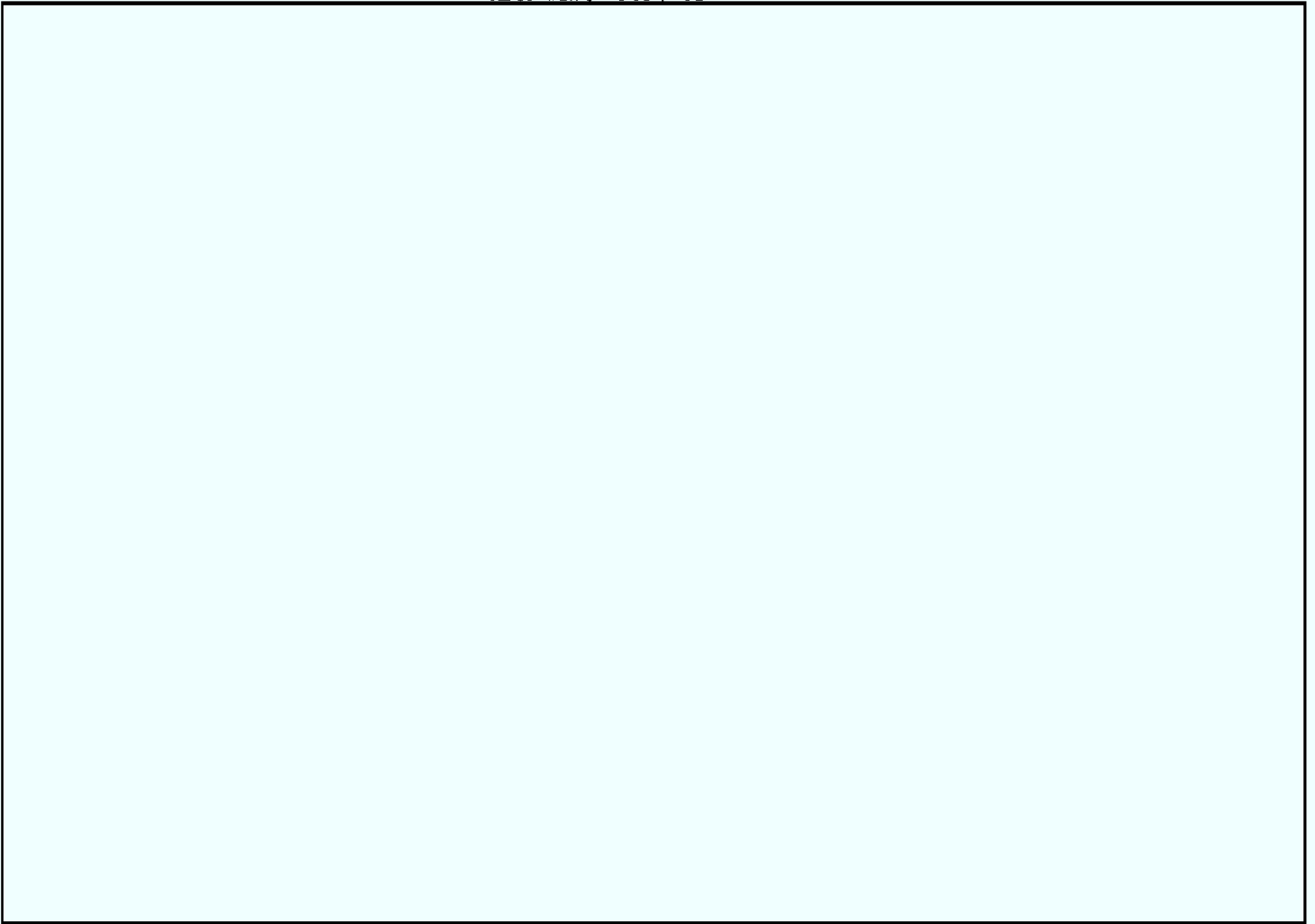
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FOIPA
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Message

Page 1 of 3

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DATE 08-15-2005 BY 65179DMh/lr2 Ca# 05-CV-0845

[REDACTED] (OGC) (FBI)

b6 , b7C

From: [REDACTED] (NK)(FBI)

b6 , b7C

Sent: Tuesday, March 22, 2005 11:18 AM

To:

[REDACTED]

Subject: RE:

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b6 , b7C

6/21/2005

NON-RECORD

CDC/ADCs: The article regarding FISA, library records, and the USA Patriot Act, despite containing numerous mistakes about FISA and about the Patriot Act, seems well intentioned and attempts to strike a balance and be fair. The author, Katherine Coolidge, appears to be a law librarian with Bulkley, Richardson, and Gelinas, LLP, and it further appears she may have written the article as an independent study project [REDACTED]

b6

b7C

[REDACTED] She tries to alleviate the concerns of the American Library Association and finds fault with several provocative and incorrect statements made by ALA Associate Executive Director Emily Sheketoff. She also clearly takes exception, as well, to several provocative statements made by former AG Ashcroft, especially those statements he made in a speech before the National Restaurant Association, where he derisively dismissed the concerns of librarians regarding FBI use of the FISC to obtain library records.

Her many inaccurate statements regarding FISA and the FISC seem to have been obtained from her interview with Kevin O'Connor, US Attorney for the District of Connecticut. According to one of Coolidge's footnotes, John Danaher, an AUSA in the District of Connecticut who specializes in foreign intelligence investigations, participated with Mr. O'Connor in the interview. So that might be why she got some things correct. At any rate, despite the many errors the article should alleviate the concerns of librarians that the FBI is using FISA to obtain library records, and also to emphasize that the FISC is not a rubber stamp for FBI surveillance.

In summary, her two human sources of information regarding FISA were people (Sheketoff and O'Connor) that don't know too much about FISA (especially Sheketoff). Mr. O'Connor might know more about FISA, and Coolidge may just have gotten it wrong. I'll end with two quotes from Coolidge's article:

"Misinformation is destructive and undermines the security of everyone."

"While a wholesale abdication of civil rights without question would be absurd, so too is an alarmist misrepresentation of information about the operation of the USA PATRIOT Act and the FISC process."

CDC [REDACTED]
Newark

b6 , b7C

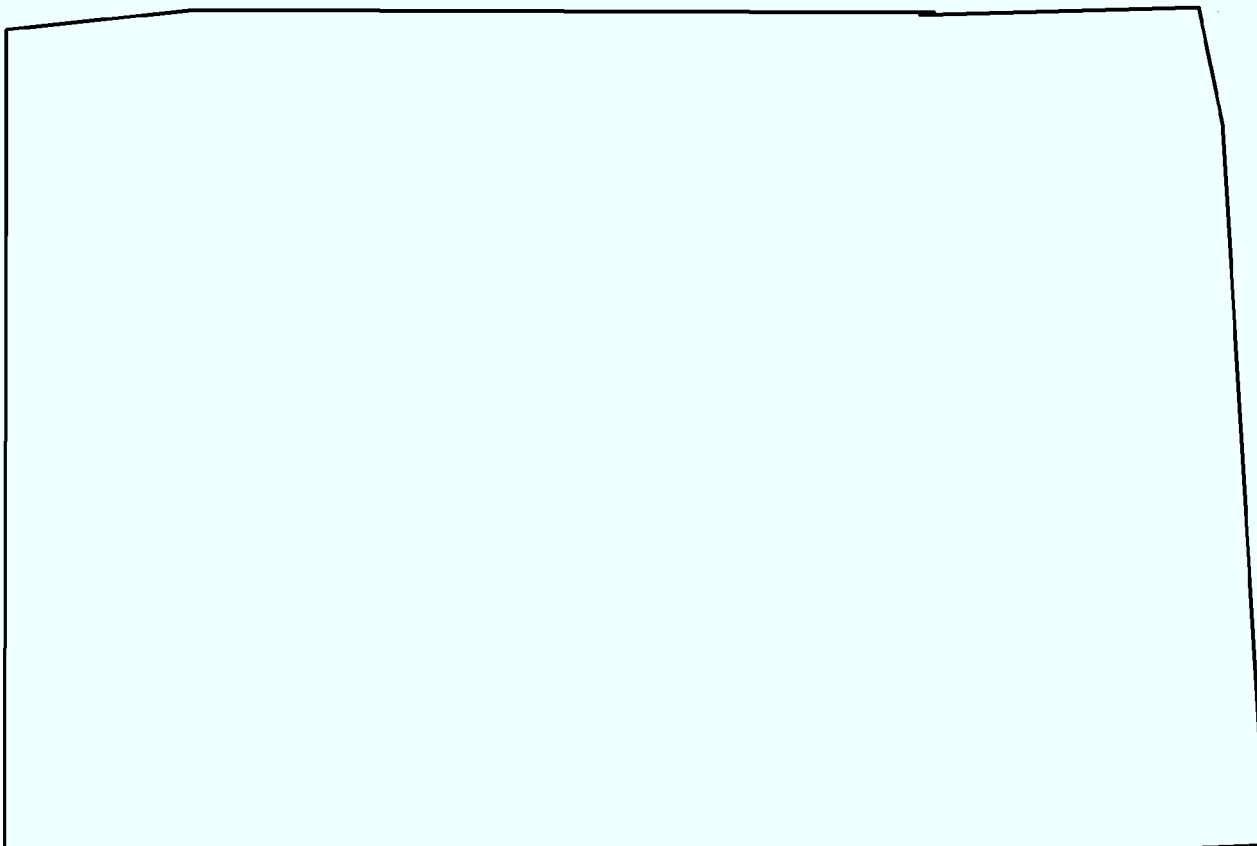
-----Original Message-----

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From: [REDACTED] (OGC) (FBI)
Sent: Monday, March 21, 2005 11:54 AM
To: [REDACTED]

6/21/2005

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Subject:

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[REDACTED] (OGC) (FBI)

From: [REDACTED] (OGC) (FBI)

b6

Sent: Monday, January 10, 2005 4:04 PM

b7C

To: [REDACTED] (OGC) (FBI)

Subject: RE: tax information

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DATE 08-15-2005 BY 65179DMH1r2 Ca#05-CV-0845

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NON-RECORD

Thanks!

-----Original Message-----

From: [REDACTED] (OGC) (FBI)

Sent: Monday, January 10, 2005 4:01 PM

To: [REDACTED] (OGC) (FBI)

Subject: RE: tax information

b3 /FGJ

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[REDACTED]

[REDACTED]

pik

-----Original Message-----

From: [REDACTED] (OGC) (FBI)

Sent: Monday, January 10, 2005 3:46 PM

To: [REDACTED] (OGC) (FBI)

Subject: FW: tax information

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NON-RECORD

[REDACTED]

Here's more info re that tax issue we discussed last week. [REDACTED]
[REDACTED] See below. What do you think? Thanks for your help.

[REDACTED]

-----Original Message-----

From: [REDACTED] (DE) (FBI)

Sent: Monday, January 10, 2005 3:20 PM

To: [REDACTED] (OGC) (FBI)

b6

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6/21/2005

Cc: [REDACTED] (DE) (FBI)
Subject: RE: tax information

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[REDACTED]

Forgive me for my ignorance, and thanks for the follow-up - I really appreciate it! [REDACTED]

[REDACTED]

b3 /FGJ

b5

b6

b7C

[REDACTED]

[REDACTED]

[REDACTED]

Thanks,

[REDACTED]

b3 /FGJ
b5
b6
b7C

b6 , b7C

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Friday, January 07, 2005 2:47 PM
To: [REDACTED] (DE) (FBI)
Subject: FW: tax information

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NON-RECORD

b6 , b7C

[REDACTED]

See below regarding your question. Does that help at all?

[REDACTED]

-----Original Message-----

From: [REDACTED] (OGC) (FBI)
Sent: Friday, January 07, 2005 2:43 PM
To: [REDACTED] (OGC) (FBI)
Subject: RE: tax information

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[REDACTED]

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-----Original Message-----

From: [REDACTED] (OGC) (FBI)

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Sent: Friday, January 07, 2005 2:36 PM

To: [REDACTED] (OGC) (FBI)

b7C

Subject: RE: tax information

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Thanks [REDACTED]

-----Original Message-----

From: [REDACTED] (OGC) (FBI)

Sent: Friday, January 07, 2005 12:15 PM

To: [REDACTED] (OGC) (FBI)

b6

Subject: tax information

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[REDACTED] 26 USC 6301(i)(1)(A), Disclosure to federal officers or employees for administration of federal laws not relating to tax administration - **disclosure of returns and return information for use in criminal investigations** -- provides that

"any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a federal district court judge or magistrate under subparagraph (B) [which describes the application that needs to be filed] be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any federal agency who are personally and directly engaged in:

(i) preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the US or such agency is or may be a party,

(ii) any investigation which may result in such a proceeding, or

(iii) any federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the US or such agency is or may be a part,

solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(B) discusses the procedures and says that upon application by a prosecutor, the judge or magistrate may grant the order if he determines that

"(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed,

(ii) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and

(iii) the return or return information is sought exclusively for use in a federal criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source."

[REDACTED]

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(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 02/27/2004

To: All Field Offices

Attn: SAC/ADIC
FBIHQ, Manuals Desk

All Legats

Attn: Legat

Counterterrorism

Attn: AD Gary Bald

Criminal Investigative

Attn: AD Grant D. Ashley

Cyber

Attn: AD Jana D. Monroe

Counterintelligence

Attn: AD David W. Szady

b2

b6

b7C

From: Office of the General Counsel
Investigative Law Unit/Room 7326
Contact: [REDACTED]

Approved By:

Caproni Valerie E VC
Curran John sp/asm
Kelley Patrick W PWK

b6

b7C

Drafted By:

[REDACTED]

Case ID #: 66F-HQ-C134260 (Pending) 66F-HQ-1364260-5
66F-HQ-C1384970 - 7564

Title: USA PATRIOT Act
Sunset Provisions

Synopsis: Many of the investigative tools created by the USA PATRIOT Act will sunset or expire on December 31, 2005 unless Congress acts otherwise. Details on the use of these tools are necessary to assist in justifying the continued need for these investigative tools. Offices are to provide the Investigative Law Unit, Office of the General Counsel (OGC) with statistics, good examples, or, at the very least, a brief narrative summarizing the benefits the office has received from these provisions by March 19, 2004.

Reference: 66F-HQ-1085160- Serial 57

Details: The USA Patriot Act contained numerous provisions which are scheduled to sunset on December 31, 2005 unless Congress acts otherwise. The DOJ and the FBI are now beginning the process of gathering evidence to demonstrate the use of these investigative tools. Specific instances where these provisions were of assistance to achieve investigative or prosecutorial goals will be instrumental in securing their renewal. For this reason, in June of 2002, when the OGC issued guidance on the provisions addressing investigative issues (see above referenced EC), it encouraged offices to keep records of the effective use of these tools. The EC also stated

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that "important information to be maintained includes both the number of times the investigative tool was effectively used and specific information on noteworthy cases." This type of information will be critical in defending the need for these tools. If we do not take the time to set forth a strong defense complete with real examples of the effectiveness of these tools, Congress may let some or all of these investigative tools expire, thus reducing our arsenal against terrorism and other serious crimes.

In this regard, offices are requested to provide statistics, good examples, or, at the very least, a brief narrative summarizing the benefits the office has received from these provisions. The information should be forwarded to the Investigative Law Unit, Office of the General Counsel (Room 7326) by **March 19, 2004**. Thereafter, offices are encouraged to continue providing the Investigative Law Unit new information on the use of these provisions as it becomes available. Many of the provisions scheduled to sunset are described below. Additional information is available on each provision as noted in the description below or in the above referenced EC.

Voice Mail - Section 209 of the Act enabled law enforcement to obtain all voice mail which is stored by a communications provider, including unopened voice mail, using the procedures set forth in 18 U.S.C. § 2703 (such as a search warrant). This also applies to other wire communications as defined by the statute. Voice messages stored and in the possession of the user, such as messages on an answering machine, are not covered by this statute. [REDACTED]

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[REDACTED] See 18 U.S.C. § 2510; 18 U.S.C. § 2703.

Nationwide Search Warrants for E-mail and Associated Records - Section 220 of the Act enabled courts with jurisdiction over an investigation to issue a search warrant with nationwide jurisdiction to compel the production of information held by a service provider, such as unopened e-mail. Previously, the search warrant had to be issued by a court in the district where the service provider was located. See 18 U.S.C. § 2703.

Voluntary Disclosures - Section 212 of the law explicitly permits, but does not require, a service provider to disclose to law enforcement either content or non-content customer records in emergencies involving an immediate risk of death or serious physical injury to any person. This voluntary disclosure, however, does not create an affirmative obligation to review customer communications in search of such imminent dangers. This provision also allows a communications service provider to disclose non-content records to protect their rights and property. This portion of the provision will most often be used when the communications service provider itself is a victim of computer hacking. See 18 U.S.C. § 2702(b) & (c)(3); 18 U.S.C. § 2703(c)(2)(F).

For about ten months (January 2003-November 2003) there was a mandatory reporting requirement for the receipt of content information (usually e-mail content) under this emergency disclosure provision. (See the Homeland Security Act and EC 66F-HQ-C1384970 Serial 501.) During that time, offices were only required to report the number of e-mail messages that were received under this voluntary disclosure provision. Offices were not required to report the receipt of records and were also not required to provide case information. For this reason, it would be beneficial for offices to now report more detail on these voluntary

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disclosures. Examples where voluntary disclosures led to valuable foreign intelligence or arrests would be particularly helpful.

Information Sharing - Section 203(b) & (d) of the Act provided new information sharing capabilities between criminal and intelligence investigations for foreign intelligence information and information obtained via a Title III electronic surveillance. (See EC 66F-HQ-A1247863-71 dated 10/26/01 for additional information.) Recognizing that this tool has become a regular part of how the FBI operates, especially in terrorism cases, no statistics are necessary. However, case examples that demonstrate the importance of this tool should be provided.

Intercepting Communications of Computer Trespassers - Section 217 of the Act clarified an ambiguity in the law by explicitly providing victims of computer attacks the ability to invite law enforcement into a protected computer to monitor the computer trespasser's communications. Before monitoring can occur, however, four requirements must be met. First, consent from the owner or operator of the protected computer must be obtained. Second, law enforcement must be acting pursuant to an ongoing investigation. Both criminal and intelligence investigations qualify, but the authority to intercept ceases at the conclusion of the investigation. Third, law enforcement must have reasonable grounds to believe that the contents of the communication to be intercepted will be relevant to the ongoing investigation. And fourth, investigators must only intercept the communications sent or received by trespassers. Thus, this section would only apply where the configuration of the computer system allows the interception of communications to and from the trespasser, and not the interception of non-consenting authorized users. Additionally, based on the definition of a "computer trespasser," communications of users who have a contractual relationship with the computer owner may not be monitored, even if their use is in violation of their contract terms (i.e. spammers). See 18 U.S.C. § 1030(e)(2); 18 U.S.C. § 2510 (20) & (21); 18 U.S.C. § 2511(2)(i).

Expanded Predicates for Title III - Sections 201 & 202 of the Act expanded the predicate offenses for Title III to include crimes relating to chemical weapons (18 U.S.C. § 229), terrorism (18 U.S.C. §§ 2332, 2332a, 2332b, 2332d, 2339A, and 2339B), and felony violations of computer fraud and abuse (18 U.S.C. § 1030). See 18 U.S.C. § 2516.

Roving FISA Surveillance - Section 206 amended FISA to allow the Court to issue a "generic" secondary order where the Court finds that the "actions of the target of the application may have the effect of thwarting the identification of a specified person." This means that, when a FISA target engages in trade craft designed to defeat electronic surveillance, such as by rapidly switching cell phones, Internet accounts, or meeting venues, the Court can issue an order directing "other persons," i.e., the as yet unknown cell phone carrier, Internet service provider, etc., to effect the authorized electronic surveillance. Even if the target is not engaged in obvious trade craft, we can obtain such an order as long as the target's actions may have the effect of thwarting surveillance. This allows the FBI to go directly to the new carrier and establish surveillance on the authorized target without having to return to the Court for a new secondary order. For additional information see EC 66F-HQ-A1247863-71 dated 10/26/01. Any examples where roving authority has been obtained and utilized to gain valuable foreign intelligence should be provided.

New Standard for FISA Pen/Trap - Section 214 of the Act eliminated the requirement that the FISA pen/trap order include specific and articulable facts giving reason to believe that the targeted line was being used by an agent of a foreign power, or was in

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communications with such an agent, under specified circumstances. FISA pen/trap and trace orders are now available whenever the FBI certifies that "the information likely to be obtained is foreign intelligence information not concerning a United States person, or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution." For additional information see EC 66F-HQ-A1247863-71 dated 10/26/01.

Changes to "Primary Purpose" Standard for FISA - Section 218 changed FISA to require a certification that foreign intelligence be "a significant purpose" of the authority sought. Section 504 amended FISA to allow personnel involved in a FISA to consult with law enforcement officials in order to coordinate efforts to investigate or protect against attacks, terrorism, sabotage, or clandestine intelligence activities, and that such consultation does not, in itself, undermine the required certification of "significant purpose." [REDACTED]

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[REDACTED] For additional information see EC 66F-HQ-A1247863 Serial 71 dated 10/26/01. While no statistics are required for this provision, case examples and brief narratives on the benefits of this provision are sought.

New Standard for Business Records under FISA - Section 215 changed the business records authority found in Title V of FISA. The old language allowed the FISA Court to issue an order compelling the production of certain defined categories of business records upon a showing of relevance and "specific and articulable facts" giving reason to believe that the person to whom the records related was an agent of a foreign power. Section 215 changed this standard to simple relevance (just as in the FISA pen register standard described above) and gave the Court the authority to compel production of "any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution." This is the same standard described above for Section 214. For additional information see EC 66F-HQ-A1247863-71 dated 10/26/01.

All submissions should be made via EC to the attention of [REDACTED] Investigative Law Unit, Office of the General Counsel, FBIHQ Room 7326 by **March 19, 2004**. Questions should be directed to either Assistant General Counsel [REDACTED] or Unit Chief [REDACTED]

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LEAD(s):

Set Lead 1: (Action)

ALL RECEIVING OFFICES

Offices are to provide the Investigative Law Unit, Office of the General Counsel (OGC) with statistics, good examples or anecdotes, or at the very least, a brief narrative summarizing the benefits the office has received from these provisions by **March 19, 2004**.

CC: Ms. Caproni
Mr. Kelley
Mr. Curran



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INFORMAL NOTE -FOR RETENTION

11/9/2004

To: ALL NSLB Employees

RE: PROCESSING OF ALL BUSINESS RECORDS
ORDERS UNDER 50 U.S. C. 1861

After receiving a business records request (215 requests) from the field, NSLB will review the request to determine if it meets the requirements of law, prepare an application, and proposed order, and, in addition, review the request to determine if any other federal statute arguably governs the release of the records sought. If the NSLB attorney determines no other federal statute arguably governs the release of the records sought as is the case with hotel records and telephone records, a brief memorandum to OIPR detailing this conclusion should be attached to the package prior to submitting the package to OIPR. Upon receipt of these "simple" 215s, OIPR will endeavor to review and approve them for presentation to the FISC within 48 hours. Further, if a problem with the package surfaces, OIPR will use its best efforts to voice its legal objection and suggest solutions within this same 48 hour time frame. It is contemplated that these "simple" requests should occasion few, if any, edits for style.

If the NSLB attorney determines that another federal statute arguably governs the release of the records sought, he or she should prepare a detailed memorandum outlining what statutes might apply, their scope with respect to release, and the attorney's conclusion as to whether 50 U.S.C. 1861 is controlling and will authorize release. This memorandum should be reviewed with the NSLB attorney's unit chief. If it appears release is not authorized, a letter for my signature should be prepared explaining our legal reasoning for dissemination to the requesting field office.

If it is the legal opinion of the NSLB attorney and the unit chief that release of the requested records is authorized, the legal memorandum should be forwarded to OIPR with the request for the 215 order. OIPR will use its best efforts to process these requests expeditiously as well; however, it is understood that these requests requiring, as they do, more extensive analysis may take more time. As a track record for these requests develops, I will coordinate with OIPR as necessary to address issues of concern or timeliness.

This process will need refinement over time. Please forward any suggestions you may have for improvement to your unit chiefs or to me directly.


Julie F. Thomas

CC: Margaret Skelley-Nolan, OIPR
James A. Baker, OIPR